TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~577~~ 764

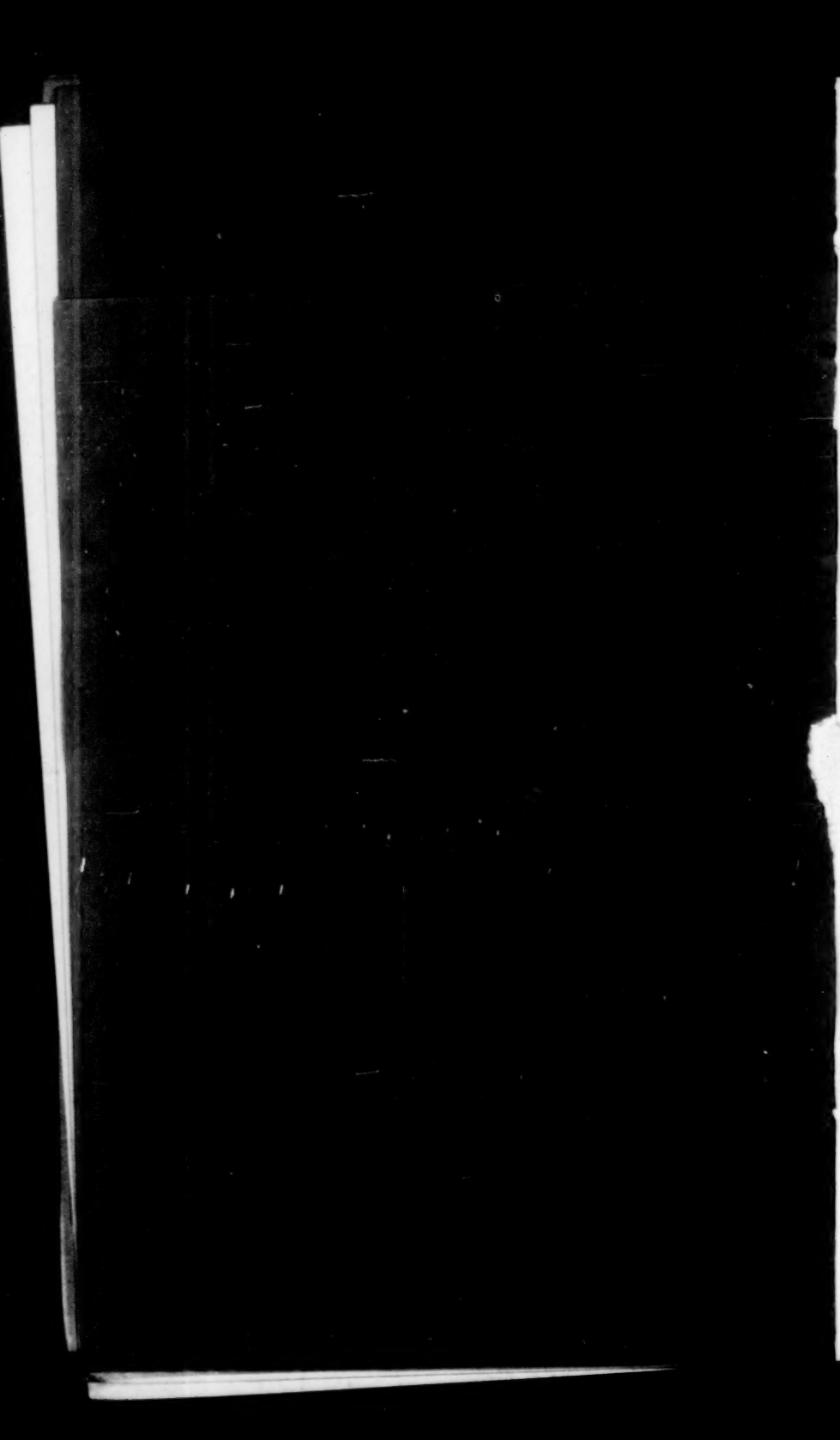
FRANKLIN PARMALEE AND DAVID A. GAGE, PLAINTIFFS IN ERROR,

vs.

DANIEL LAWRENCE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED DECEMBER 13, 1869.



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No. 377.

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vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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A United States of America, State of Illinois, supreme court, third grand division.

Pleas before the Honorable Sidney Breese, Charles B. Lawrence, and Pinkney H. Walker, justices of the supreme court of the State of Illinois, at a term thereof begun and held in the court-house in the city of Ottawa, in the county of La Salle and State aforesaid, on the second Tuesday, being the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

Present, Sidney Breese, chief justice.
" Charles B. Lawrence, associate justice.
" Pinkney H. Walker, " "
" Robert G, Ingersoll, attorney general.
" H. A. McCaleb, sheriff of La Salle County.

Attest: WOODBURY M. TAYLOR, *Clerk.*

B Be it remembered that heretofore, to wit, on the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, the same being one of the days of the September term of this court for the year aforesaid, there was filed in the clerk's office of said court by Corydon Beckwith, esq., a certified transcript or record of proceedings of the superior court of Chicago, in a cause entitled:

FRANKLIN PARMELEE AND DAVID A. GAGE
vs.
DANIEL LAWRENCE.

Which is in the words and figures, to wit:

1 STATE OF ILLINOIS, *County of Cook, ss:*

Pleas before the honorable the judges of the superior court, within and for the county of Cook, and State of Illinois, at a regular term of said superior court of Chicago, begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday, being the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-second.

Present the Honorable Joseph E. Gary, chief justice of the superior court of Chicago; John A. Jameson, William A. Porter, judges; Charles H. Reed, prosecuting attorney; , sheriff of Cook County.

Attest: AUGUSTUS JACOBSON, *Clerk.*

2 Be it remembered that heretofore, to wit, on the fourth day of August, in the year of our Lord one thousand eight hundred and sixty-three, came Libertes Bigelow, David A. Gage, and Franklin Parmelee, and filed in the office of the clerk of the said superior court of Chi- their certain bill of complaint and injunction bond, in the words figures following, to wit:

ST E OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, in chancery.

To e honorable the judges of the said superior court of Chicago, in chancery sitting:

complaining showeth unto your honors your orators Liberty Bigel o is a resident of the city of Boston, in the State of

Massachusets, and a citizen of said State of Massachusets, and David A. Gage and Franklin Parmelee, who are residents of the city of Chicago, in the county of Cook, and State of Illinois, that heretofore, to wit, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six, (A. D. 1856,) one Daniel Lawrence, then and now a resident of Medford, in the county of Middlesex, and State of Massachusetts, and a citizen of said last-mentioned State, made and entered into articles of agreement in writing with your orators and one Walter S. Johnson, under his hand and seal, and under the hands and seals of your orators and said Johnson, in and by which said articles of agreement the said Daniel Lawrence covenanted and agreed, in substance, that, upon the payment to him by your orators and the said Walter S. Johnson, of the sum of fifty thousand dollars, ($50,000,) and interest thereon, as in said articles of agreement stated, he, the said Daniel Lawrence, would sell, and, by a good and sufficient deed, convey and assure to your orators and the said Johnson, free and clear of all incumbrances, all those pieces and parcels of land, and the buildings thereon, and appurtenances thereunto belonging, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit:

Lots numbers fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago.

Also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen, (13;) and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet, to the place of beginning.

And your orators and the said Walter S. Johnson, in and by the said articles of agreement, on their part covenanted and agreed in substance to pay to the said Daniel Lawrence for said pieces or parcels of land the sum of fifty thousand dollars, with interest thereon at the rate of ten per cent. per annum, said sum of fifty thousand dollars ($50,000) to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five eaqual annual instalments, from the first day of October, A. D. 1856; that is to say, ten thousand dollars ($10,000) to be paid on the first day of October, 1857, and the same amount on the first day of October in each year thereafter, until the said sum of fifty thousand dollars should be paid your orators; and the said Johnson being, however, expressly authorized to pay said sum of money in larger instalments or payments at the times above specified, or sooner, if they should desire to do so. Interest on the said sum of fifty thousand dollars, ($50,000,) at the rate aforesaid, to commence on the first day of October, A. D. 1856, and to be paid at "The Tremont Bank," in the city of Boston, semi-annually from the said first day of October, on all sum remaining unpaid.

It was further provided in and by the said articles of agreem that your orators and the said Johnson should have the possession use, and receive the rents and profits to their own use and benefi the said premises above described during all the time above desi for the payment of said fifty thousand dollars; that your orators a said Johnson should complete the erection of the buildings then course of erection upon said premises, and pay all taxes and asses levied or imposed thereon during said time, and should make ments which might accrue during said time under and by vi

tain articles of agreement bearing date the first day of August, A. D. 1855, between Frederick T. Flagler, of the first part, and your orator, Franklin Parmelee, of the second part, and also should pay all rent or rents payable by virtue of a certain lease bearing date the tenth
7 day of October, A. D. 1853, made by James Crow and Thomas Crow to Theodorus Doty and Daniel Andrews during the time aforesaid. And your orators and said Walter S. Johnson were also to assign to the said Daniel Lawrence all policies of insurance upon the buildings on said premises then issued, and to keep said premises well and sufficiently insured during said time for the use and benefit of said Lawrence; said Lawrence, upon the payment to him of the said sum of fifty thousand dollars, ($50,000,) to assign to your orators and said Johnson all such policies of insurance as he might have acquired upon said premises, and also to convey the said premises, with the appurtenances and buildings as aforesaid, to your orators and said Johnson.

And it was further provided in and by said articles of agreement that all the covenants and agreements therein contained should be obligatory upon the heirs, executors, administrators, or assigns of the parties thereto respectively, as by the said articles of agreement, sealed with the
8 seals of the respective parties thereto as aforesaid, now in the possession of your orators, and ready to be produced to this honorable court, reference being thereunto had, will more fully and at large appear. And your orators attach hereto a copy of the said articles, marked "Exhibit A," and pray that the same may be taken and considered as a part of this their bill of complaint, and to which they refer for greater certainty as to the terms and provisions thereof.

Your orators further represent and show unto your honors that they and the said Walter S. Johnson, relying upon the said articles of agreement, and the covenants and agreements of the said Daniel Lawrence therein contained, immediately after the execution of the said articles, and in pursuance thereof, entered into and upon the several lots and parcels of ground therein described, and proceeded to complete and finish, and did in fact complete and finish, the buildings then in process of erection thereon, and refered to in the said articles, and in so doing
9 expended upon said premises a large sum of money, to wit, the sum of one hundred thousand dollars and upwards. And afterwards, and on or about the 6th day of November, A. D. 1858, the said Walter S. Johnson, for a valuable and sufficient consideration to him paid by your orators, sold and conveyed to your orators all his right, title, and interest in and to the said premises, and all his rights under the articles of agreement aforesaid with the said Daniel Lawrence; that your orators and the said Johnson, up to the time of his selling out to your orators as aforesaid, and your orators after that time, continued, up to and including the month of April, A. D. 1861, to pay to the said Lawrence considerable sums of money on account of the principal and interest of the said fifty thousand dollars in the said articles of agreement specified, and had, up to the time last specified, actually paid to the said Lawrence, on account of the moneys aforesaid, the sum of twenty-seven
10 thousand dollars, ($27,000,) all of which was received by the said Lawrence; that the same was paid by your orators, and by your orators and the said Johnson, to the said Lawrence, in the city of Boston, and a considerable portion thereof at great cost and expense for exchange between Chicago and said city. Your orators, however, admit that they and the said Johnson have not paid, as provided in said articles, the several instalments of the said fifty thousand dollars, but further expressly state that the said instalments were not, nor were they

any or either of them, ever demanded by the said Lawrence at the office of said F. Parmelee & Co., in Chicago, where the same were, by the terms of said articles of agreement, made payable, nor elsewhere; nor did the said Lawrence, to the knowledge of your orators, have any person present at the said place of payment to receive the said instalments, or any or either of them, at the several times when the same respectively became due and payable; neither has the said Lawrence, at any time or place, or in any manner, until recently, demanded or asked from your orators, or, so far as your orators are advised, from the said Walter S. Johnson, any portion of the said sum of fifty thousand dollars in the said articles of agreement mentioned; and knowing, as your orators believe and charge to be true, that he was wholly unable to comply with the covenants and agreements in the said articles contained, to be kept and performed by him.

Your orators further represent and show unto your honors that, from the date of the said articles of agreement up to the sale to your orators by said Johnson of his interest in the said premises as aforesaid, your orators and the said Johnson possessed, occupied, and rented the said premises, and received the income and rents thereof, and since the sale of the said Johnson as aforesaid the said premises, and all the buildings and improvements thereon, then were and still are used, occupied, and rented by your orators; that, excepting only the payment of the said sum of fifty thousand dollars, your orators and the said Johnson, up to the time of the sale by said Johnson to your orators as aforesaid, and your orators since that time, have fully and in all things kept and performed their covenants and agreements in the said articles of agreement with the said Lawrence aforesaid contained; that they long since completed the erection of the buildings in course of erection on said premises at the date of said articles, have paid all taxes and assessments levied or imposed on said premises since that time, paid all the rents that have since accrued upon the lease of October 10th, A. D. 1853, from James Crow and Thomas Crow to Theodorus Doty and Daniel Andrews, and made all the payments that have accrued under and by virtue of articles of agreement bearing date the 1st day of August, A. D. 1855, between Frederick T. Flagler and your orator, Franklin Parmelee; that your orators and said Walter S. Johnson, upon the delivery of said articles of agreement, assigned to said Lawrence all policies of insurance upon the buildings on said premises, and have since kept said premises well and sufficiently insured for the use and benefit of said Lawrence.

Your orator further represents and shows unto your honors that, by the terms of the said articles of agreement aforesaid with the said Daniel Lawrence, the whole of the said sum of fifty thousand dollars therein specified to be paid by your orators and the said Johnson, together with interest thereon, excepting so much thereof as has been paid as aforesaid, is now unpaid; and that the said Lawrence (who your orators pray may be made a party defendant to this your orator's bill of complaint) has recently demanded the same from your orators, and has threatened and given out, and still threatens and gives out, that unless your orators pay the said sum and interest, he will institute proceedings against your orators for the recovery of the possession of all of said premises, and to eject and remove your orators and all persons hiding under them from the possession and enjoyment thereof, without paying your orators or the said persons holding under them any compensation therefor, and your orators fear, and, as they insist, have reason to fear, that said Lawrence will endeavor to execute his

threats aforesaid, and that he will give your orators great trouble and annoyance, and put them to great costs and expense in and about the defence of said suit and prosecutions to be instituted by him, unless he is restrained and prevented from so doing by the injunction of this honorable court; and that under and by reason of the said articles of agreement aforesaid, and the occupation of said premises by your orators under the same, they will be unable successfully to defend an action at law, which the said Lawrence threatens as aforesaid to commence against them.

Your orators further represent unto your honors that they have fitted up a large portion of the buildings so erected by them on said premises as aforesaid, especially for the accommodation of their business and for the keeping of the large number of horses, omnibusses, and wagons used by them upon and in connection with their various
15 omnibus lines in the city of Chicago; that your orators, if ejected from the said premises, would be unable to procure any place for the accommodation of their said horses and carriages, and their business must in consequence thereof be greatly damaged, and their property aforesaid exposed to waste and injury, and the income and profits of their said business seriously impaired if not entirely destroyed, and your orators would thereby suffer great and irreparable loss and damage.

Your orators further represent and show unto your honors that they have been at all times ready and willing, and are now ready and willing, and have offered, and do now offer, to pay to the said Daniel Lawrence the full amount of the principal and interest in the said articles of agreement mentioned to be paid by your orators and said Walter S. Johnson, and which now remains unpaid, upon the execution and delivery to your orators by the said Lawrence of a deed in due form, conveying and assuring to your orators, free and clear of all incumbrances,
16 the pieces and parcels of land above and in the said articles of agreement described, and which the said Lawrence in and by the said articles covenanted and agreed to sell, convey, and assure to your orators and the said Walter S. Johnson, upon the payment to him of said sum of fifty thousand dollars and interest as aforesaid; but that, notwithstanding the offer and readiness of your orators as aforesaid, the said Lawrence has wholly neglected and refused to execute and deliver to your orators a deed, conveying to them the said pieces and parcels of land free and clear of all incumbrances, as by his covenant in the said articles of agreement contained he was and is bound to do, and still neglects and refuses so to do; and, excepting that part of lot number fourteen, (14,) in block number thirteen, (13,) Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hun-
17 dred and fifty (150) feet, to the place of beginning, the said Daniel Lawrence had not, at the date of the said articles of agreement, has not since had, and has not now, any title in fee to the said premises in said articles described, or any power or authority to convey the same to your orators. And your orators insist that the said Lawrence is now wholly unable to comply with the terms of the said articles of agreement on his part by reason of his want of title to the said premises, and that he has made no effort to procure such title as by the said articles he covenanted to convey; that until he is able, ready, and willing to convey, and offers to convey, the said premises to your orators free and clear of all incumbrances, your orators ought not to be required to pay

the said sum of fifty thousand dollars, and interest thereon, as in said articles of agreement specified; and being ready and willing, and having offered to pay the said sum and interest, upon receiving such a conveyance, according to the terms of said agreement, your orators further insist that they ought not to be deprived of the possession
18 and use of the said premises, and of the improvements placed thereon by them, or any part thereof.

Your orators further represent and show unto your honors that the portions of said premises not actually occupied by your orators as aforesaid are rented out to and occupied by divers persons holding under your orators and doing business therein and paying rent therefor to your orators; and that any disturbance of your orators' possession of said premises, and their rights therein, would occasion not only great loss and damage to your orators' business as aforesaid, but also deprive them of the rents and profits of said premises, improved as aforesaid at their own expense, and be productive of great and serious inconvenience and injury to the several persons occupying the same as aforesaid.

And your orators further represent and show unto your honors that they have in a friendly way applied to and requested the said Daniel Lawrence to comply with his covenants and agreements afore-
19 said, or to make some reasonable and satisfactory compromise of the differences arising between him and your orators, under the articles of agreement aforesaid. And your orators well hoped that the said Lawrence would have complied with the reasonable requests of your orators, and that he would have made and performed such terms of settlement as your orators could in justice accept.

But now so it is, may it please your honors, that the said Daniel Lawrence not only refuses to arrange and settle said difficulties with your orators on fair and reasonable terms, and rejects all the offers of your orators in the premises; but he is, as your orators verily believe, intending and preparing to institute proceedings against your orators, and the other persons occupying said premises under your orators as aforesaid, to deprive them of the possession of said premises, and actually threatens to commence suits at law for that purpose, in utter disregard of your orators' equitable rights in the said premises, under the said
20 articles of agreement aforesaid, and their repeated offers so made to the said Lawrence as aforesaid, and is, as your orators believe, contriving and confederating with divers persons to your orators unknown (but whose names, when discovered, your orators pray they may be at liberty to insert herein, with proper and apt words to charge them, as parties defendant hereto) to injure and annoy your orators, and to deprive them of the moneys actually expended by them, as aforesaid, upon the said premises, and of the benefits thereof, to which they are by the articles of agreement aforesaid so clearly entitled; and for his so doing the said Lawrence urges a great number of unfounded pretences, all of which actings, doings, and pretences of the said Lawrence and his confederates are contrary to equity and good conscience, and tend to the manifest wrong and oppression of your orators in the premises.

In tender consideration whereof, and forasmuch as your orators are entirely remediless by the strict rules of the common law, and can
21 only have relief in a court of equity where matters of this nature are properly cognizable and relievable:

To the end, therefor, that the said defendant, Daniel Lawrence, and his confederates, when discovered, may full, true, direct, and perfect answers make to all and singular the statements and charges herein contained, but without oath, (the answer of said defendant under oath being

ing hereby waived, according to the form of the statute in such case made and provided;) and that, too, as fully and particularly as though the same were here gain repeated, and he thereunto particularly interrogated; and that in the mean time, and until the further order of this court, the said defendant, Daniel Lawrence, his agents, attorneys, and solicitors, may be restrained and enjoined, by a writ of injunction issued out of and under the seal of this honorable court, from instituting any suit or suits or other proceedings at law to recover the possession of the premises in the articles of agreement aforesaid between him and your orators and said Walter S. Johnson, and herein particularly de-
22 scribed, and from in any manner disturbing or interfering with your orators' possession of said premises, or the possession of any party or parties, person or persons, holding any portion of said premises as tenements or otherwise under your orators, and from disturbing or interfering with the receipt by your orators of the rents & income of said premises, or any part thereof, and from transferring or assigning the said articles of agreement so entered into by him with your orators & said Walter S. Johnson, bearing date the 15th day of September, A. D. 1856, as aforesaid, or disposing, or attempting to dispose, of any interest which he may have in said premises, or any part thereof, and from enforcing, or attempting to enforce, any forfeiture of said articles of agreement, or any payment of the sum of money therein specified; and that the said defendant may by the decree of this honorable court, to be entered herein, be compelled and ordered to adjust and settle with your orators, in some equitable manner, the damages which your orators will sustain by reason of his failure and refusal to comply with
23 the terms of his agreement aforesaid; and that until such settlement your orators may be protected in the quiet and peaceable possession of said premises, as against the acts and doings of the said defendant, and all parties acting for or claiming through or under him; and that your orators may have such other & further or different relief as the nature of their case may require, and to justice and equity shall appertain:

May it please your honors to grant unto your orators not only the people's writ of injunction as above prayed for, but also the writ of summons of the poople of the State of Illinois, issuing out of and under the seal of this honorable court, directed to the said defendant, Daniel Lawrence, and commanding him, by a certain day to be therein named, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the allegations hereof, and to stand to, abide, and perform such order and decree in the
24 premises as to your honors shall seem meet and proper to be rendered.

And your orators will ever pray, &c.

LIBERTY BIGELOW,
DAVID A. GAGE,
FRANKLIN PARMELEE,
By McALLISTER, JEWETT, JACKSON,
Their Attorneys.

McALLISTER, JEWETT & JACKSON, *Sol'rs for Compl't.*

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

Franklin Parmelee, being first duly sworn, deposes and says that he is one of the parties complainant in the foregoing bill of complaint

named; that said bill has been read to him, and he knows the contents thereof, and that the several matters and things therein stated, as of the knowledge of the said complainants, are true, and as to those matters stated on information and belief, he believes them to be true.

FRANK PARMELEE.

Subscribed and sworn to before me this 4th day of August, A. D. 1863.

[SEAL.] OBADIAH JACKSON, JR.,
Notary Public.

[5-c't U. S. int. rev. stamp.]

25 STATE OF ILLINOIS, *County of Cook, ss:*

Let a writ of injunction issue according to the prayer of the foregoing bill of complaint, upon the complainant Franklin Parmelee and David A. Gage filing in your office an injunction bond, in usual form, in the penal sum of ten thousand dollars, with Henry Fuller as security.

Chicago, August 4th, 1863.

VAN H. HIGGINS, *Judge.*

To the clerk of the superior court of Chicago.

Articles of agreement made this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Daniel Lawrence, of Medford, Middlesex County, & State of Massechusetts, party of the first part, and Liberty Bigelow, of Boston, & State aforesaid, & Walter S. Johnson, David A. Gage, Franklin Parmelee,
26 of the city of Chicago, County of Cook, and State of Illinois, party of the second part, witnesseth:

That upon the said parties of the second part paying to the party of the first part the sum of fifty thousand dollars, and interest thereon, as hereinafter stated, the party of the first part [part] hereby covenants and agrees to sell, and, by a good & sufficient deed, to convey and assure to the parties of the second part, free and clear of all incumbrances, all those pieces and parcels of land, and the buildings thereon, and appurtenances thereunto belonging, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit: Lots numbers fifteen (15) & sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen, (13,) and also that part of lot number fourteen (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet,
27 to the place of beginning, being the same pieces or parcels of land conveyed by the parties of the second part to the party of the first part by deed bearing even date herewith. And the said parties of the second part hereby covenant and agree, to and with the said party of the first part, to pay to the said party of the first part, for said piece or parcels of land, the sum of fifty thousand dollars, with interest thereon at the rate of ten per cent. per annum, which said sum of fifty thousand dollars is to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five equal annual instalments, from the first day of October, in the year eighteen hundred and fifty-six; that is to say, ten thousand dollars to be paid on the first day of October, eighteen hundred and

&

fifty-seven, and the same amount on the first day of October in each year thereafter until said sum of fifty thousand dollars be paid; but the parties of the second part shall be, and are hereby, authorized to pay said sum of money in larger instalments or payments at the time above specified, or sooner, if they, the said parties of the second part, shall desire or choose so to do. Interest on said sum of fifty thou-
28 sand dollars, at the rate aforesaid, shall commence on the first day of October, eighteen hundred and fifty-six, and is to be paid at the Tremont Bank, in the city of Boston, semi-annually, from said first day of October, on all sums remaining unpaid of said fifty thousand dollars.

The said parties of the second part are to have possession and use, and receive the rents and profits, to their own use and benefit, of all the above-described premises, during all the time above designated for the payment of said fifty thousand dollars. And the said parties of the second part are to complete the erection of the buildings now in course of erection upon said premises, and pay all taxes and assessments levied or imposed thereon during said time; and also to pay all rent or rents payable by nature of a certain lease bearing date the tenth day of October, A. D. 1853, made by James Crow & Thomas Crow to Theodorus Doty and David Andrews, during said time; also to make all payments which may accrue during said time under & by virtue of certain articles of agreement bearing date the first day of August, A. D.
29 1855, between Frederick T. Flagler, party of the first part, and Franklin Parmelee aforesaid, party of the second part therein.

The parties of the second part are to assign to the party of the first part all policies of insurance upon the buildings on said premises now issued, and are to keep said premises well and sufficiently insured during said time for the use and benefit of the said party of the first part. And when said sum of fifty thousand dollars, with the interest aforesaid, shall be paid by the parties of the second part, or their heirs, assigns, executors, or administrators, the said party of the first part, or his heirs, assigns, executors, or administrators, the said party of the first part hereby covenants to and with the said parties of the second part, their heirs, assigns, executors, or administrators, to assign to the parties of the second part all such policies of insurance as he may have acquired on said premises, and also to convey the said above-described premises, with the appurtenances and buildings as aforesaid, to the parties of the second part.

It is further mutually covenanted and agreed that all the covenants and agreements herein contained shall be obligatory upon the
30 heirs, executors, administrators, or assigns of the party of the first part, and the parties of the second part hereto respectively.

Witness our hands and seals the day and year above written.

	DANIEL LAWRENCE.	[SEAL.]
	LIBERTY BIGELOW.	[SEAL.]
	WALTER S. JOHNSON.	[SEAL.]
(Signed)	DAVID A. GAGE.	[L. S.]
	FRANKLIN PARMELEE.	[L. S.]

J. P. WELCH *to signature of D. Lawrence.*

Injunction bond.

Know all men by these presents that we, Franklin Parmelee, David A. Gage, & Henry Fuller, all of Chicago, Cook County, Illinois, are firmly bound unto Daniel Lawrence, of the county of Middlesex, in the

State of Massachusetts, in the penal sum of ten thousand dollars, lawful money of the United States; for the payment of which, well & truly to be made, we bind ourselves, our heirs, executors, & administrators jointly, severally, & firmly by these presents, sealed with our seals, and dated this 4th day of August, A. D. 1863.

31 The condition of the above obligation is such, that whereas the above-bounden Franklin Parmelee, and David A. Gage, and one Liberty Bigelow have on the day of the date hereof, upon their certain bill of complaint exhibited and filed by them in the superior court of Chicago against the said Daniel Lawrence, obtained an order from the Honorable Van H. Higgins, one of the judges of said court, for a writ of injunction, to be issued out of and under the seal of said court, against the said Daniel Lawrence, his agents, attorneys, and solicitors, restraining and prohibiting them from the instituting of [instituting] any suit or suits, or other proceedings at law, for the recovery of the possession of certain premises in said bill particularly described, and from the doing of certain other acts and things in the said bill specified, and the said writ in pursuance of the order aforesaid is about to issue:

Now, therefore, if the said Franklin Parmelee, David A. Gage, and Liberty Bigelow shall well and truly pay, or cause to be paid, to

32 the said Daniel Lawrence, all such costs and damages as he may sustain by reason of the wrongful issuing of said writ, then this obligation to be void; otherwise to remain in full force and effect.

FRANK PARMELEE. [SEAL.]
D. A. GAGE. [SEAL.]
HENRY FULLER. [SEAL.]

And also, on the day and year last aforesaid, there issued out of said clerk's office the people's writ of summons in chancery; which said writ, together with the return of the sheriff thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summons Daniel Lawrence, if he shall be found in your county, personally to be and appear before the

33 superior court of Chicago, of said county of Cook, on the first day of the term thereof, to be holden at the court-house in the city of Chicago, in said Cook County, on the first Monday of September next, to answer unto Liberty Bigelow, David A. Gage, and Franklin Parmelee, in their certain bill of complaint, filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Thomas B. Carter, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 4th day of August, A. D. 1863.

[SEAL.] THOMAS B. CARTER, *Clerk.*

[50-c'ts inter. rev. stamp cancelled.]

Served this writ on the within-named Daniel Lawrence by deliv a copy thereof to him the 4th day of August, 1863.

D. S. HAMMOND, *Sh*ing
B. G. FISCHER, *Depy*
F,

34 And thereupon, on the day and year last aforesaid, there issued out of said clerk's office the people's writ of injunction; which said writ, together with the return of the sheriff thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

The people of the State of Illinois to Daniel Lawrence, and to your attorneys, solicitors, agents, and servants, and to each and every of them, greeting:

Whereas it hath been represented to the Honorable Van H. Higgins, one of the judges of the superior court of Chicago, in said county and State aforesaid, on the part of Liberty Bigelow, David A. Gage, and Franklin Parmelee, complainants, in their certain bill of complaint exhibited before said judge, and filed in said court, against you, the said Daniel Lawrence, to be relieved touching the matters and things therein complained of, in which said bill it is stated, among other things,
35 that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience; and the said judge, having under his hand endorsed upon said bill an order that a writ of injunction issue out of said court, according to the prayer of said bill:

We, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said Daniel Lawrence, and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from instituting any suit or suits, or other proceedings at law, to recover the possession of lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen, (13;) and all that part of said lot fourteen, (14,) in block thirteen (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20)
36 feet, thence east 150 feet, thence south twenty (20) feet, thence west 150 feet, to the place of beginning; and from in any manner disturbing or interfering with the said complainants' possession of said premises, or the possession of any party or parties, person or persons, holding any portion of said premises, as tenants or otherwise, under the said complainants, and from disturbing or interfering with the receipt of the rents and income of said premises, or any part thereof, and from transferring or assigning the articles of agreement entered into by you, the said Daniel Lawrence, with the said complainants, and one Walter S. Johnson, bearing date the 15th day of September, A. D. 1856, or disposing of, or attempting to dispose of, any interest you may have in said premises, or any part thereof, and from enforcing, or attempting to enforce, any forfeiture of the articles of agreement aforesaid, or any payment of the sum of money therein specified, until this honorable court, in chancery sitting, shall make other order to the contrary.

Hereof fail not under the penalty of what the law directs.

To the sheriff of said county to execute and return in due form
37 of law.

Witness Thomas B. Carter, clerk of our said court, and the seal thereof, at Chicago, in said county, this 4th day of August, A. D. 1863.

[SEAL.] THOMAS B. CARTER, *Clerk.*

Served this writ on the within-named Daniel Lawrence by delivering a copy thereof to him the 4th day of August, 1863.

D. S. HAMMOND, *Sh'ff*,
By G. FISCHER, *Dep'ty*.

And afterwards, to wit, on the seventh day of September, in the year last aforesaid, came the said defendant, Daniel Lawrence, by Charles A. Gregory, his solicitor, and filed in the office of the clerk of said court his certain entry of appearance in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Cook*, ss:

In the superior court of Chicago, September term, A. D. 1863.

38 LIBERTY BIGELOW, DAVID A. GAGE, Franklin Parmelee, *vs.* DANIEL LAWRENCE. } In chancery.

And now comes Charles A. Gregory, a solicitor of this court, and enters herein appearance for the said defendant, David Lawrence.

CHARLES A. GREGORY,
Solicitor for Daniel Lawrence.

And afterwards, to wit, on the seventh day of September, 1863, the following order was entered of record, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee *vs.* DANIEL LAWRENCE. } Bill.

This day comes Charles A. Gregory and enters his appearance herein for the said defendant, Daniel Lawrence; and on his motion it is
39 ordered that time for said defendant to plead, answer, or demur to the bill of complaint on file in said cause be, and the same is hereby, extended thirty days from this date.

And afterwards, to wit, on the sixth day of October, 1863, the following order was entered of record, viz:

LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee, *vs.* DANIEL LAWRENCE. } Bill.

And now comes said defendant by Charles A. Gregory, his solicitor; and on his motion it is ordered that said defendant be, and is hereby, allowed to file his answer to the original bill of complaint in said cause, as well to file his cross-bill of complaint in said cause.

And thereupon, upon the same day and year last aforesaid, came the said Daniel Lawrence and filed in the office of the clerk of the said court his certain answer in the words and figures following, to wit:

40 STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, in chancery.

DANIEL LAWRENCE
ads.
LIBERTY BIGELOW, DANIEL A. GAGE, AND Franklin Parmelee.

The answer of Daniel Lawrence, the defendant in said cause, to the bill of complaint of Liberty Bigelow, David A. Gage, and Franklin Parmelee, complainants.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto saith, this defendant admits the execution by him, and the said complainants, & the said Johnson, of the articles of agreement in writing, made and entered into between this defendant, of the one part, and the said complainants & said Walter S. Johnson, of the other part, mentioned in said bill of complaint, but states expressly that the said agreement in writing was executed with the purpose, and under the circumstances, & in the manner hereinafter
41 stated by this defendant, and not otherwise, and admits that the said articles of agreement concern the said real estate described in said bill of complaint. And this defendant admits the making of the said several covenants and agreements in said articles of agreement on his part made; and admits the making by said complainants and said Johnson of the several covenants and agreements on the part of said complainants & said Johnson therein stated; and admits the copy of said articles of agreement appended to said bill of complaint is a full & true copy of said writing obligatory; and this defendant begs leave to refer to said copy, exhibited by said complainants, for full particulars of the respective covenants and agreements of the said parties thereto.

And this defendant, further answering, admits that the said complainants entered into and upon the several lots & parcels of ground mentioned in said articles of agreement and described in said bill of complaint, and that they proceeded to complete and finish, and did, in fact, complete and finish, certain buildings, then, at the time of making
42 said agreement, in process of erection thereon; and, in so doing, complainants expended upon said improvements (as this defendant is informed & believes to be true) a large sum of money, but as to how much money was thus expended this defendant is entirely ignorant, but leaves the complainants to make such proof thereof (as to the amount so expended) as this court shall direct.

And this defendant, further answering, says as to the allegation in said bill contained that said Johnson at the time alleged, or at any other time, sold out his interest in said premises, and his right under such articles of agreement, to the complainants, this defendant has no knowledge of such being the fact, save as he is informed by said complainants' said bill, and he neither admits nor denies the same, but leaves complainants to prove the same to this court.

plead this defendant, further answering, says that he denies that complegants and said Johnson, or either of them, up to the time of the alsaiselling out by said Johnson to said complainants, paid, or that mplainants since that time have paid, to this defendant any sum
43 r sums of money on account of the principal and interest of said ty thousand dollars in said articles of agreement specified, and nies that complainant, or complainants & said Johnson have

ever paid on account of the said moneys the sum of twenty-seven thousand dollars, as is alleged, or that any such sum of money, or any other sum, was ever received by said Lawrence on such account, as is alleged; but this defendant says it is true that said complainants have paid certain sums of money in the city of Boston, Massachusetts, on account of the interest on said fifty thousand dollars, but precisely how much has been so paid this defendant is unable to specify, and leaves the complainants to make such proof thereof as this court may direct; but this defendant states that whatever sums may have been so paid on account of the interest on said principal sum of fifty thousand dollars, (if any such sums were paid,) in said city of Boston, were so paid under the agreement aforementioned to pay the same to this defendant in said city of Boston, and whether the same, or any, or a considerable portion thereof, were so paid at any cost and expense to complainants or complainants and said Johnson, for exchange, between Chicago and Bos-
44 ton, is to this defendant unknown, and is, as this defendant is advised, immaterial.

And this defendant, further answering, says it is true, as admitted in said bill of complaint, that neither the said complainants nor said Johnson have paid the several instalments of the said fifty thousand dollars, nor any part of said instalments; but defendant denies that the said instalments, or either of them, were not demanded by defendant at the office of F. Parmelee & Co. in Chicago. And this defendant denies that he has not demanded the same at the time & place when & where the same were payable by the terms of said agreement until recently for the reason alleged in said bill, or any other reason; on the contrary thereof this defendant states that the payments of said instalments was deferred and put off from time to time by the act of said complainants, and against the wish of defendant.

And this defendant says it is true, as is admitted and alleged in said bill, that from the date of said articles of agreement up to the
45 time of the alleged sale to complainants by said Johnson, the complainants & said Johnson possessed, occupied, and rented the said premises, and received the income and rents thereof, & since the time of the alleged sale by said Johnson to complainants the said premises, and all the buildings and improvements thereon, have been and still are used, occupied, and rented by complainants; but this defendant denies that said complainants and said Johnson, or said complainants, have fully and in all things kept and performed their covenants and agreements in said articles of agreement with this defendant, except as to the payment of said fifty thousand dollars, but, on the contrary thereof, this defendant says that by said articles of agreement said complainants and said Johnson were to keep said premises well and sufficiently insured for the use and benefit of this defendant, during said time; that is to say, during the time said sum of fifty thousand dollars remained unpaid. And this defendant saith that said complainants have not kept, and do not now, at the time of filing their bill of complaint, keep, said premises well and sufficiently insured to and for the use & benefit of this defendant.

46 And this defendant saith that whether the complainants ha[ve] paid all taxes and assessments levied and imposed on said pr[e]ises since the date of said articles of agreement, or whether they h[a]ve paid all rents that have since that date accrued by virtue of the lea[se] said bill mentioned, or whether the complainants have made any o[r] the payments that have accrued under and by virtue of the articl[es] agreement bearing date 1st day of August, A. D. 1855, between Fr[ed]er-

ick L. Flagler and said Franklin Parmelee, or not, is to this defendant unknown, and he has no knowledge of the said matters, except as he is informed by the complainants, and therefore he neither admits nor denies the same of his knowledge, but leaves the complainants to make proof thereof as the court shall direct.

And this defendant admits that said complainants & said Johnson, upon the execution and delivery of said articles of agreement first above mentioned, assigned to this defendant certain policies of insurance upon said buildings on said premises, but whether they assigned all such policies of insurance this defendant does not know.

47 And this defendant denies that they have since kept said premises well & sufficiently insured for the use and benefit of this defendant; but, on the contrary thereof, defendant says the said premises were insufficiently and only partially insured for the benefit of this defendant at the time of filing the said bill of complaint.

And this defendant says it is true, as alleged in said bill of complaint, that, by the terms of said articles of agreement first referred to, the whole of said sum of fifty thousand dollars, together with the interest thereon, excepting so much thereof as has been paid, if any part thereof has been paid, is now due from said complainants & said Johnson unto this defendant; and it is also true, as alleged in said bill, that this defendant has demanded of the said complainants the payment thereof, which was refused.

And this defendant states that he believes it to be true, as alleged in said bill, that complainants have fitted up large portions of the

48 buildings so erected by them on said premises especially for the accommodation of their business, and for the keeping of the large number of horses, omnibusses, and wagons used by them, upon and in connection with their various omnibus lines in the city of Chicago; but whether, if said complainants were ejected from said premises, they would be unable to procure any place for the accommodation of their said horses and carriages, or whether their business would, in consequence thereof, be damaged much or little, or their said property exposed to waste or injury, or the income or profit of their said business be at all impaired or be destroyed, or whether complainants would thereby suffer great or irreparable loss or damage, or any loss or damage at all, is to this defendant entirely unknown, save as the same is alleged in said bill; and he neither admits nor denies the same, but leaves the complainants so make such proof thereof as this court shall direct.

And this defendant states that it may be true that complain-

49 ants are ready and willing, and have been at all times ready and willing, and do offer to pay defendant the amount of principal and interest mentioned in said articles of agreement which now remains unpaid, upon the execution and delivery to complainants by defendant of a deed in due form conveying and assuring to complainants, free and clear of all incumbrances, the pieces and parcels of land in said articles of agreement, and in said bill described; yet, this defendant says the said complainants & said Johnson, or said complainants alone, ought to pay said fifty thousand dollars, and the interest thereon, as in said agreement provided for, unto this defendant, without requiring such a deed of said premises from this defendant, and they ought to pay said sum of money and interest to this defendant without insisting upon any further conveyance from this defendant than a release or conveyance to them of such title in said premises (whatever the same may be) as he acquired from them by virtue of the said deed from complainants and

Johnson referred to in said articles of agreement and hereinafter more particularly described.

50 And this defendant, further answering, saith he is ready, willing, and now offers, and hath ever been ready and willing, to release and convey to the said complainants & said Johnson, or to the said complainants alone, if they alone are entitled thereto, such interest and title in & to said premises as he obtained from said complainants and said Johnson, free & clear of and from any incumbrances created by or through or under this defendant, upon the payment to this defendant by said complainants, or by said complainants and said Johnson, of said sum of fifty thousand dollars, together with the interest thereon at ten per cent., agreed to be paid by said complainants and said Johnson.

And this defendant, further answering, denies that by his agreements, arrangement, and understanding with said complainants & said Johnson, he is or ever was bound to convey said premises, or any part thereof, to said complainants, or to said complainants and said Johnson, free & clear of all incumbrances, unless he received the title thereof from said complainants free and clear from all incumbrances, & whether he

51 so received the title to said premises appears from the records of said Cook County, and is well known to said complainants, but which this defendant has not yet searched for the purpose of ascertaining, and the title to said land is to this defendant unknown; and this defendant has not concerned himself to investigate said title, or to obtain any further title thereto, for the reason that he was and is advised that this defendant had a right, both in law and in equity, to rely upon the covenants of said complainants & said Johnson in the deed of conveyance from them to him, and upon the facts hereinafter mentioned.

And this defendant, further answering, saith that whether he has not now, or whether he never had, any title in fee to the said premises, (except to the specific land which he is admitted to have title in fee to by said bill of complaint,) or any power or authority to convey the same, is to this defendant unknown, & he has no other knowledge thereof save such as he derives from said bill of complaint, and can form no belief thereof; but defendant says that the complainants & said John-

52 son, or said complainants, ought, in equity and justice, whatever may be the state of the title to said premises, or any part thereof, to pay to this defendant the said sum of fifty thousand dollars, together with the interest thereon at ten per cent., as agreed by them to be paid, as will hereinafter more fully appear, unless the said defendant has suffered the title thereto, or to some part thereof, to become incumbered or impaired; and this defendant denies that he has suffered or permitted the same, or any part, to be incumbered or impaired by, from, or through him.

And this defendant, further answering, says that whether he is able or unable to comply with the terms of said articles of agreement on his part, by reason of the pretended want of title to said premises, or any part thereof, the defendant is unable to state, and has no other knowledge of the title to said lands except such as he derives from said complainants' said bill, and whether the fact be as alleged in said bill in this regard this defendant can form no belief from his own knowledge or otherwise; and this defendant admits that he has made no effort

53 to procure such, or any title, as it is alleged he ought to convey to complainants, and for the reasons hereinafter shown; and this defendant denies that the complainants ought not to be required to pay him said sum of fifty thousand dollars, and the interest thereon agreed by them to be paid, until this defendant is able, ready, & willing, and

offers to convey the said premises in the manner required by said complainants.

And this defendant, further answering, admits that portions of said premises, not actually occupied by the complainants, are rented out to, and occupied by, divers persons holding under the complainants, as alleged in said bill, but just what portions or how much of said premises are so occupied and so rented out this defendant is entirely ignorant and cannot state, and whether any disturbance of the complainants' possession thereof would in any way injure said complainants, or their said tenants, is to this defendant unknown.

54 And this defendant says that it is not true, as alleged, that complainants have, in a friendly way or otherwise, applied to or requested this defendant to comply with his covenant and agreement as set forth, or to make any reasonable or satisfactory compromise of the difference arrising between this defendant and the complainants as alleged; but, on the contrary, this defendant, answering, states that he has recently, at great sacrifice & expense of time and money, traveled from his home in Massachusetts to said Chicago for the purpose of collecting the money due to him from said complainants, being the amount of money & the interest agreed to be paid by them, as described in said articles of agreement, but that he has found, by his interviews with said complainants, that they are contriving and intending to injure, wrong, & oppress this defendant, and so defraud him out of the said money which is justly due to him, as will hereinafter appear; but defendant says the reason they allege for not paying the same is not a good reason or a justification, either in law or in equity, as will appear from the circumstances hereinafter stated.

55 And this defendant, further answering, saith that the true and real and substantial agreement & contract, made by and between this defendant, of the one part, and the said Johnson and the complainant, of the other part, was in the following manner, and under the circumstances following, & for the purposes as follows, that is to say: That on or about the 15th day of September, A. D. 1856, this defendant, being then a resident of and living in Medford, Massachusetts, was there applied to by the said complainants & the said Johnson, who were doing business in Chicago, Illinois, & were occupying the premises in said bill described, to advance and lend unto them the sum of fifty thousand dollars upon their personal security, and upon the further security hereinafter mentioned; and they, the complainants and said Johnson, agreed with defendant that, in consideration that defendant would lend to them said sum of fifty thousand dollars for a certain period, they would pay unto defendant, for the use of said money, interest at and after the rate of ten per centum per annum, and would pay back

56 the said principal sum at the time and in the manner hereinafter mentioned; and in consideration of said agreement, and relying upon the same, this defendant did then and there lend to and advance unto said complainants & said Johnson the said sum of fifty thousand dollars, and the said complainants and the said Johnson then and there, in consideration of said loan, agreed to pay the said sum of money unto defendant, together with interest at ten per centum per annum for the use of the same at the time and in the manner hereinafter specified; and for further and additional security for the payment of said sum of the principal and the interest, it was further agreed, then and there by and between defendant & complainants and said Johnson, that these said complainants and said Johnson should convey the land and premises

described in said bill of complaint unto defendant as & by way of mortgage for a further and additional security for said loan over & above the personal security of said borrowers. And at the instance and devise of said complainants and said Johnson, instead of a note and mort-
57 gage, or a note & trust-deed, in the usual form, which was the form of security which this defendant expected and devised, complainants and said Johnson proposed and insisted upon the following form of mortgage, which this defendant finally assented to, not suspecting any detriment to result therefrom, and not supposing that said parties complainant and said Johnson would ever endeavor to take unfair or inequitable advantage of him by means thereof, and thereupon the following instruments in writing were made and executed by and between said defendant and said complainants & Johnson: The said complainants conveyed, or pretended to convey, unto this defendant certain interests or title, whatever the same may be, by a certain deed absolute in form, in and to the said premises in said bill mentioned. And thereupon, then and there, as part of the same agreement and for the purpose of making the said conveyance in effect a mortgage security only as aforesaid, this defendant agreed to sell and reconvey the said premises unto said complainants and said Johnson when the said complainants and said Johnson should repay unto defendant said
58 principal sum of fifty thousand dollars, together with ten per cent. interest thereon; but it was expressly understood and agreed, by and between the parties—i. e. the defendant & said complainants and said Johnson—that defendant should not, and did not thereby, waive the personal security of said complainants and said Johnson for the repayment of said principal and interest. And thereupon, as a continuation of the said first agreements of said complainants and Johnson to pay the said fifty thousand dollars and interest at ten per cent. unto defendant for the money so loaned, but for the further purpose of creating further and collateral security, and in pursuance of their agreement, these complainants and said Johnson, who were then in possession of said premises, under their hands and seals, made and executed and delivered unto this defendant their certain deed, a copy of which is appended to this answer, marked "Exhibit B," and which it is prayed may be taken and considered to be a part of this answer, conveying in mortgage to this defendant the same premises mentioned in the said bill of com-
59 plaint; in & by which said deed said complainant and said Johnson did covenant to warrant and forever defend the said bargained premises therein mentioned, (being the same mentioned in said bill of complaint,) in the quiet and peaceable possession of this defendant, his heirs, and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, and did also covenant that they and said Johnson would fulfill all the terms and conditions to be performed or fulfilled by said Parmelee on his part in the said articles of agreement of August 18th, 1855, between said Parmelee and said Flagler, and did also covenant that they and said Johnson would keep and perform the agreements & pay the monies required to be kept & performed and paid under and by virtue of said lease of October 10th, 1853, and did covenant that said premises were free and clear of all other incumbrances. And thereupon, as a part of the same agreement, and for the purpose of expressing the agreed defeasance according to, & in compliance with, the understanding & agreement of the parties thereto, this defendant, together with the complain-
60 ants and said Johnson, made, executed, and delivered the said articles of agreement which are mentioned and referred to in said

bill, of which a true copy is set out in Schedule A by said complainants. And now so it is that although, by the terms of the said agreement, which is evidenced by said two instruments of writing, the said sum of fifty thousand dollars long since became due and payable unto this defendant from said complainants and said Johnson, together with the interest thereon, yet, nevertheless, the said complainants and said Johnson have hitherto wholly neglected and refused, and still neglect and refuse, to pay the same or any part thereof, nor have they paid any part of the interest thereon, since the month of April, 1861, up to and inclusive of which time the interest thereon was fully paid; but no part of the principal sum has ever been paid, and as part of the interest which has accrued since the 1st of April, 1861, has ever been paid, although the same and every part thereof was in person by this defendant demanded of the said complainants, at Chicago aforesaid, on or about the 3rd day of August, A. D. 1863, before the filing of said bill, and were often
61 before demanded of said complainants by said defendant.

The said complainants and said Johnson, and since the alleged sale by Johnson to complainants the said complainants, have always had the possession of said premises, so far as this defendant has any knowledge on this subject; but, at all events, this defendant has never been in the actual possession of said premises, but the said complainants and said Johnson have kept the possession thereof.

And this defendant saith that, for ought that he knows to the contrary, the title to the said premises is in the same condition as when he took the mortgage upon the same as aforesaid; and that if said title is not, or was not then, a good title in fee-simple in this defendant, any defect therein is owing to some default of the said complainants or of complainants and said Johnson, for which this defendant ought not to be held responsible under the circumstances and by the said agreement of said parties.

62 And defendant further answering saith that the said complainants are estopped by their deed of conveyance of September 15th, 1856, and by the fact of making and entering into said articles of agreement of Sept. 15th, 1856, referred to by said complainants as and for a mere evidence of a defeasance in writing to the said deed, from insisting upon a reconveyance from this defendant of said premises to said complainants free and clear of any such incumbrances as existed at the time of making and delivering said deed, or free and clear of any incumbrances except such as may have been created or permitted by, from, or through this defendant. And defendant expressly avers that he has not created, suffered, or permitted by any act or omission of his any incumbrance upon said premises, or any part thereof.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for this
63 defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and voided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL LAWRENCE.

CHARLES A. GREGORY,
Solicitor for Def't, & of Counsel.

Defendant's Exhibit B.

This indenture, made this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Liberty Bigelow and Harriet A. Bigelow, his wife, of the city of Boston, Massachusetts, Walter S. Johnson and Electa M. Johnson, his wife, David A. Gage and Elisa M. Gage, his wife, and Franklin Parmelee and Adaline Parmelee, his wife, of the city of Chicago, county of Cook, and
64 State of Illinois, parties of the first part, and Daniel Lawrence, of Mulford, Middlesex County, State of Massachusetts, witnesseth that the said parties of the first part, for and in consideration of the sum of fifty thousand dollars in hand paid by the party of the second part, (the receipt whereof is hereby acknowledged,) have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by the presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of second part, and to his heirs and assigns forever, all the following described lots, pieces, or parcels, of land situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit:

Lots numbers fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen; and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of
65 the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet, to the place of beginning.

The said above-described property being subject in this grant to the rents and conditions provided for, and imposed in and by a certain lease made by James Crow and Thomas Crow, parties of the first part, and Theodorus Doty and Daniel Andrews, parties of the second part therein, and bearing date the tenth day of October, eighteen hundred and fifty-three, and filed for record in the recorder's office of the county of Cook aforesaid, November twenty-eighth, and recorded in book eighty-two, page six hundred and eighty-two, and also to the payments to be made in and by certain articles of agreement, bearing date the first day of August, eighteen hundred and forty-five, between Frederick Flagler, of the first part, and Franklin Parmelee, of the second
66 part therein, for the sale by said Flagler to said Parmelee, of part of the above-described premises, and filed for record in the office of said recorder, on the nineteenth day of September, eighteen hundred and fifty-five, and recorded in book of deeds ninety-nine, page three hundred and thirty-one, which said lease and articles of agreement, and the moneys thereby required to be paid, are to be kept, performed, and paid by the said Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, or their heirs or administrators.

Together with all and singular the buildings, improvements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversioners, remainder and remainders, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and de-
67 scribed, with the appurtenances, unto the said party of the second

part, his heirs and assigns forever; and the said Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that the said above-described premises are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind soever, except the said lease and articles of agreement above mentioned; and the above-bargained premises in the quiet and peacable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

68

W'M W. STEWART,	*Witness.*	LIBERTY BIGELOW.
W'M W. STEWART,	*do.*	DAVID A. GAGE.
I. F. WHITE,	*do.*	ELIZA M. GAGE.
W'M W. STEWART,	*do.*	WALTER S. JOHNSON.
ROLLIN W. HURLBURT,	*do.*	ELECTA M. JOHNSON.
W'M W. STEWART,	*do.*	FRANKLIN PARMELEE.
ALEXANDER PARKER,	*do.*	ADALINE PARMELEE.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William W. Stewart, a notary public in said county, in the State aforesaid, do hereby certify that Liberty Bigelow, David A. Gage, Walter S. Johnson, and Franklin Parmelee, who are personally known by me to be the same persons whose names are subscribed to the annexed indenture of writing, appeared before me this day in person and acknowledged that they had signed, sealed, and delivered the said instrument of writing as their free act and deed for the use and purposes therein expressed.

Given under my hand and notarial seal this fourteenth day of Oct., A. D. 1856.

[SEAL NOTARY PUBLIC.] WM. W. STEWART,
Notary Public.

69 And thereupon, upon the same day and year last aforesaid, came the said Daniel Lawrence by Charles A. Gregory, his solicitor, and filed in the office of the clerk of the said court his certain cross-bill; which said cross-bill, together with the exhibits thereunto annexed, is in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, in chancery, of the September term A. D. 1863.

To the honorable the judges of the said superior court of Chicago, in chancery sitting:

Humbly complaining showeth unto your honors your orator Daniel Lawrence, of the town of Medford, county of Middlesex, and State of Massachusetts, that heretofore, to wit, on or about the 15th day of September, A. D. 1856, Liberty Bigelow, who is and was then a resident of the city of Boston, in the State of Massachusetts, and not a citizen of said State of Illinois, and David A. Gage and Franklin Parmelee,
70 who were then and are now residents of said city of Chicago, and Walter S. Johnson, a citizen of the State of Wisconsin, and who

Defendant's Exhibit B.

This indenture, made this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Liberty Bigelow and Harriet A. Bigelow, his wife, of the city of Boston, Massachusetts, Walter S. Johnson and Electa M. Johnson, his wife, David A. Gage and Elisa M. Gage, his wife, and Franklin Parmelee and Adaline Parmelee, his wife, of the city of Chicago, county of Cook, and
64 State of Illinois, parties of the first part, and Daniel Lawrence, of Mulford, Middlesex County, State of Massachusetts, witnesseth that the said parties of the first part, for and in consideration of the sum of fifty thousand dollars in hand paid by the party of the second part, (the receipt whereof is hereby acknowledged,) have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by the presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of second part, and to his heirs and assigns forever, all the following described lots, pieces, or parcels, of land situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit:

Lots numbers fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen; and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of
65 the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet, to the place of beginning.

The said above-described property being subject in this grant to the rents and conditions provided for, and imposed in and by a certain lease made by James Crow and Thomas Crow, parties of the first part, and Theodorus Doty and Daniel Andrews, parties of the second part therein, and bearing date the tenth day of October, eighteen hundred and fifty-three, and filed for record in the recorder's office of the county of Cook aforesaid, November twenty-eighth, and recorded in book eighty-two, page six hundred and eighty-two, and also to the payments to be made in and by certain articles of agreement, bearing date the first day of August, eighteen hundred and forty-five, between Frederick Flagler, of the first part, and Franklin Parmelee, of the second
66 part therein, for the sale by said Flagler to said Parmelee, of part of the above-described premises, and filed for record in the office of said recorder, on the nineteenth day of September, eighteen hundred and fifty-five, and recorded in book of deeds ninety-nine, page three hundred and thirty-one, which said lease and articles of agreement, and the moneys thereby required to be paid, are to be kept, performed, and paid by the said Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, or their heirs or administrators.

Together with all and singular the buildings, improvements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversioners, remainder and remainders, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and de-
67 scribed, with the appurtenances, unto the said party of the second

part, his heirs and assigns forever; and the said Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that the said above-described premises are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind soever, except the said lease and articles of agreement above mentioned; and the above-bargained premises in the quiet and peacable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

68

W'M W. STEWART,	*Witness.*	LIBERTY BIGELOW.
W'M W. STEWART,	*do.*	DAVID A. GAGE.
I. F. WHITE,	*do.*	ELIZA M. GAGE.
W'M W. STEWART,	*do.*	WALTER S. JOHNSON.
ROLLIN W. HURLBURT,	*do.*	ELECTA M. JOHNSON.
W'M W. STEWART,	*do.*	FRANKLIN PARMELEE.
ALEXANDER PARKER,	*do.*	ADALINE PARMELEE.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William W. Stewart, a notary public in said county, in the State aforesaid, do hereby certify that Liberty Bigelow, David A. Gage, Walter S. Johnson, and Franklin Parmelee, who are personally known by me to be the same persons whose names are subscribed to the annexed indenture of writing, appeared before me this day in person and acknowledged that they had signed, sealed, and delivered the said instrument of writing as their free act and deed for the use and purposes therein expressed.

Given under my hand and notarial seal this fourteenth day of Oct., A. D. 1856.

[SEAL NOTARY PUBLIC.] WM. W. STEWART,
Notary Public.

69 And thereupon, upon the same day and year last aforesaid, came the said Daniel Lawrence by Charles A. Gregory, his solicitor, and filed in the office of the clerk of the said court his certain cross-bill; which said cross-bill, together with the exhibits thereunto annexed, is in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, in chancery, of the September term A. D. 1863.

To the honorable the judges of the said superior court of Chicago, in chancery sitting:

Humbly complaining showeth unto your honors your orator Daniel Lawrence, of the town of Medford, county of Middlesex, and State of Massachusetts, that heretofore, to wit, on or about the 15th day of September, A. D. 1856, Liberty Bigelow, who is and was then a resident of the city of Boston, in the State of Massachusetts, and not a citizen of said State of Illinois, and David A. Gage and Franklin Parmelee,
70 who were then and are now residents of said city of Chicago, and Walter S. Johnson, a citizen of the State of Wisconsin, and who

is not a resident or citizen of said State of Illinois, (and who are defendants hereinafter named,) applied through said Bigelow in person on his own behalf and on behalf of his said partners as hereinafter named, to your orator in Massachusetts, to lend them, said defendants, the sum of fifty thousand dollars on their own personal security, and such further security as should be agreed upon between them; and, in consideration that your orator would lend them said money, they promised and agreed, to and with your orator, to pay to him for the use of and as interest on said money interest at and after the rate of ten per centum per annum for such length of time as they should keep said money, and at and after that rate of interest for any portion of said money for such length of time as any portion of said money should remain unpaid. And it was then and there further agreed by and between your orator & [and] the defendants, that the defendants should repay to your orator said sum of
71 fifty thousand dollars, at the times and in the manner following, to wit: in the several instalments, & at the times & in the manner mentioned in the articles of agreement dated Sept. 15th, 1856, a copy of which is hereto appended and marked Exhibit E, which, it is prayed, may be considered a part of this bill. And thereupon, in consideration of the said promise and agreement of said defendants, your orator accordingly advanced the said sum of fifty thousand dollars to said defendants, and paid the same to them in Massachusetts.

And your orator says that at the said time the said defendants were partners in business in the said city of Chicago, carrying on the omnibus business and other business and in the firm name of F. Parmelee & Co., & that as such partners they borrowed said money and applied the same in their said partnership business, and that they continued thereafter to be partners for a long time, and, so far as your orator knows, are still partners, or some of them are still partners, and carrying on said business.

And your orator further showeth unto your honors that, on or about the fifteenth day of September, A. D. 1856, the defendants made unto
72 your orator a mortgage upon the premises hereinafter described, meaning the premises which are described in Exhibits D & E; and, at the instance and request and for the accommodation of said defendants, your orator consented that said mortgage security should be effected by the complainant's executing and delivering to your orators a warranty deed, absolute in form. & thereupon, and as a part of the same, & for the purpose of a defeasance, in accordance with the agreement that said defendants should have the right to redeem said premises by paying the said principal and interest, it was also agreed that your orator should execute & deliver to the defendants an agreement in writing, expressing that on the repayment to him in a certain manner & at certain time, to wit, in the manner and at the times in the said writing to be specified & hereinafter shown in said Exhibit E, your orator would reconvey to said defendants the said premises; and it was further agreed as part of the same agreement that the defendants should have the possession & use, and receive the rents & profits, of said premises during all the time they had in which to repay said money, and said defendants were also by said agreement to complete the erection
73 of certain buildings then in course of erection on said premises, and pay all taxes and assessments levied or imposed thereon during said time, and to pay all rents payable by virtue of a certain lease bearing date the 10th day of October, A. D. 1853, made by James Crow & Thomas G. Crow to Theodorus Doty and Daniel Andrews, also during said time to make all payments which might accrue

during said time under & by virtue of certain articles of agreement bearing date the first day of August, A. D. 1855, between Frederick T. Flagler, party of the first part & Franklin Parmelee aforesaid, party of the second part, and that they should also keep said premises well and sufficiently insured during said time for the use & benefit of your orator, and also to assign to your orator all policies of insurance upon the buildings on said premises then at the time of making said agreement issued.

And it was also then and there, and for the sole purpose aforesaid of crating a mortgage security to your orator on said premises & of giving to defendants the right of redemption of said premises, agreed by your orator & the defendants that when said sum of fifty thousand
74 dollars, with the interest aforesaid, should be paid by the defendants to your orator, that then your orator should assign to the defendants all such policies of insurance as he might have acquired upon said premises, & should also reconvey the said premises with their appurtenances & buildings to the defendants above named.

And the said defendants agreed to pay said money so loaned to them by your orator, together with the interest thereon, as agreed upon; but in order to make their covenants conformable to the mere form of said transaction, instead of covenanting in the written agreement, which was executed thereupon, to repay so much money with interest, as and being the money loaned to defendants by your orator, (which was the true meaning and intent of the parties,) said covenant was in form that the said defendants would pay to your orator, for said premises, the said sum of fifty thousand dollars, with interest thereon at the rate of ten per cent., and in the manner and at the times specified in the said articles of agreement then and there made.

And your orator avers that it was under the aforesaid circum-
75 stances, and with the purpose and intent on the part of both your orator & the defendants to create a mortgage as aforesaid, and with no other purpose or intent whatsoever, that the aforesaid defendants, in accordance with the said understanding and agreement of the parties, did thereupon make, execute, and deliver unto your orator their certain deed under their hands and seals, and bearing date the fifteenth day of September, 1856, conveying, or purporting to convey, said premises—i. e., the premises therein described—or some interest in the same, to your orator, with covenants of warranty, and against incumbrances, &c., with other covenants, as therein appear. And your orator states that Eliza M. Gage, the wife of said David A. Gage, and Electa M. Johnson, the wife of said Walter S. Johnson, and Adaline Parmelee, wife of said Franklin Parmelee, joined with their said respective husbands in the execution of said deed, or purported so to join, a true copy of which said deed is hereto annexed, marked Exhibit "D," and which it is prayed may be taken and considered a part of this bill. And thereupon, also, in furtherance of said purpose, and solely as an evidence of the debt and the
76 mortgage, this defendant and said complainants made, executed, and delivered the articles of agreement, bearing date the fifteenth day of September, 1856, which are hereto appended, marked Exhibit "E," which it is prayed may be taken & considered as a part of this bill.

And your orator further shows that, owing to inconvenience and delay resulting from the negotiations for effecting a full understanding between the said parties, and by reason of the said parties being separated by a great distance from each other, your orator living in Medford, Mass., aforesaid, & some of these defendants in Illinois, the said deed of conveyance was not delivered to your orator till about the sixteenth day of

October, 1857, but the exact date of such delivery your orator does not remember and cannot state, and the said deed was on the last-mentioned date filed for record in the recorder's office of Cook County aforesaid, and was recorded in book of deeds No. 123, page 128, having been previously, to wit, on the 14th day of October, 1856, duly acknowledged by said Bigelow, Gage, Johnson, and Parmelee, and
77 the said articles of agreement were likewise and for the same cause actually delivered at the time of, and not until the delivery of said deed, the said articles of agreement having been acknowledged by your orator on the 23d day of September, 1856, and afterwards delivered to said defendants, and then, to wit, on the 17th day of October, 1856, the same was filed for record in said office, and recorded in book of deeds No. 125, page 71.

And your orator further showeth unto your honors that the said principal sum of fifty thousand dollars has long since become wholly due and payable unto your orator, as appears by the said agreement, but the same was not paid to your orator, or any person for his use, at the time or times mentioned in said agreement, or at any other time or times or manner, nor has any part of said principal sum ever been paid to your orator, or to any person for him. And your orator states that, in fact, no part of the interest on said principal sum has been paid, which has accrued thereon since the first day of April, 1861, though your orator states that up to and inclusive of that date the interest was fully
78 paid. So your orator says that said principal sum of fifty thousand dollars, together with interest thereon at ten per cent. per annum, from & since the first day of April, 1861, is due and payable and unpaid to your orator from the defendants. And your orator hath of late frequently applied to the said defendants, & requested them to pay your orator the said sum of fifty thousand dollars and the interest due thereon, & that defendants refused to pay the same; and they have neglected and do still neglect to pay any part of the same, setting up by way of excuse various unfounded pretences, &c., and in particular pretending that your orator had not at the date of said articles of agreement, has not since then, and has not now, any title in fee to the said premises, except to a small portion thereof, or any power or authority to convey the same to the defendants, & pretending and alleging that your orator is now wholly unable to comply with the terms of said articles of agreement on his part by reason of his alleged want of title to a large part or some part of said premises.

And your orator states that just what his title in & to said
79 premises, or any part thereof, may be is to your orator unknown, but he does state that he is ready & willing, and hath ever been ready and willing, and he now offers to release and to reconvey unto said defendants (or to such of them as may be entitled by agreement among themselves to receive the same) just such title and interest in and to said premises, and every part, as he received from said defendants by virtue of their said warranty deed to him, and to assign to the said defendants all such policies of insurance as he has acquired upon said premises through said defendants, upon the payment unto your orator by said defendants, or either of them, of the said sum of fifty thousand dollars & the interest due thereon, as aforesaid, or upon the repayment to your orator of what may be decreed to be due of said principal and interest by this court.

And your orator further showeth unto your honors that though your orator entered into the said covenant to sell, and, by a good and sufficient deed, to convey and assure to the defendants, free and clear of all incum-

brances, the said premises upon the condition recited above;
80 yet that the true import and meaning of said agreement was, and the understanding and agreement of the parties was, that the same was to operate merely for and as a defeasance in writing to the said deed absolute, which was then and there at the same time made.

And your orator further shows that the said defendants ought to be and are estopped by their said deed to him, and by the covenants of warranty and covenants against incumbrances, and their covenants to make the payments on said lease mentioned in their said deed, & by their covenants to carry out the terms of said contract with said Flagler, from setting up or alleging that your orator is unable to perform his said agreement to convey said premises by reason of want of title thereto, or by reason of any defect of title thereunto whatever, unless such want of title or such defect of title has been created or permitted by some act or omission of your orator. And your orator alleges that he has not done any act or been guilty of any omission impairing said title or incumbering the same.

And your orator shows that he has never been in the occupa-
81 tion or possession of said premises, or any part thereof, but before and at the time of, and ever since the date of said deed and said articles of agreement, these defendants, or some of them, have had and kept the occupation and possession of all of said premises, and received the rents thereof.

And your orator hoped, under the circumstances aforesaid, that he would not be put to any trouble or delay in collecting said money when the same became due, and he did not expect the said defendants, or any of them, to deny that the said deed and said agreements were a mortgage, and intended merely as a security to your orator, and did not anticipate that they, or any of them, would pretend that he was bound to make to them any further, other, or different title to said premises than they conveyed to him, even though they should keep all their covenants.

But now so it is, may it please your honors, the said Liberty Bigelow, David A Gage, and Franklin Parmelee, & Walter S. Johnson, combining and confederating together, to and with divers other persons as
82 yet to your orator unknown, (but whose names when discovered your orator prays may be inserted herein as defendants, and they made parties hereto, with proper and apt words to charge them,) how to injure and oppress your orator, the said confederates do now refuse to pay to your orator the said fifty thousand dollars and the interest thereon, according to their aforesaid agreement; and the said Bigelow, Gage, and Parmelee have lately filed their bill in this honorable court against your orator, setting up the making and delivery of said articles of agreement of September 15th, 1856, by your orator, (and suppressing and concealing the other facts herein set forth,) and thereby representing, among other things, that your orator hath not, nor ever had, title in fee to the said premises, except as to a small portion thereof, and as to that they admit that he has title in fee to, and that he is now unable to keep his covenants to sell and convey as in said articles of agreement is covenanted, and praying, among other things, that your orator be restrained by this court from instituting any suit or suits, or other proceedings at law, to recover the possession of said premises, and from in any man-
83 ner disturbing or interfering with your orator's possession of said premises, or with the possession of any of those persons holding under them as tenants or otherwise, and seeking by said bill to restrain him from disturbing or interfering with their receipts of the rents and

income of said premises, and from transferring or assigning the said articles of agreement of September 15, 1856, and from disposing of, or attempting to dispose of, any interest he may have in said premises, or any part thereof, or from enforcing, or attempting to enforce, any forfeiture of said articles of agreement, or any payment of the sum of money therein specified and praying, also, that your orator may be decreed to settle with them in some manner the alleged damages which they pretend they will sustain by reason of your orator's alleged failure to comply with the terms of said articles of agreement, and until such settlement that they may be protected in the quiet and honorable possession of said premises as against your orator and all persons acting or claiming through or under him, and for such other and further relief as their case may require, and to justice and equity shall appertain. And they
84 pretend that the said Johnson has long since sold out his interest in and to said premises, and said articles of agreement, &c., to them, whereas your orator charges that said Johnson has still some interest in said premises and said articles of agreement, all of which, together with other things, will more fully appear by reference to said bill, which was filed in this court on the 4th day of August, 1863, on the chancery side of this court, and in which your orator is the sole defendant, and said Bigelow, Gage, & Parmelee are the complainants. And upon the filing of said bill an injunction was issued and served upon your orator in accordance with the prayer of said bill, and thereupon in due time thereafter your orator filed his answer in said cause.

And they pretend in said bill that by said articles of agreement your orator agreed and was bound to convey a perfect title in fee to them upon the condition therein expressed, whereas your orator charges that the said articles of agreement were merely intended to operate as a defeasance of the aforesaid deed upon the condition of the payment
85 as aforesaid by the defendants first above named. They also pretend in their said bill that there are some incumbrances on said premises, or part of them, and that your orator has not title in fee to all of said premises, but what is the particular nature of said incumbrances, or what is the defect in your orator's title in said premises, or who has the title to said premises, they refuse to discover.

And your orator says that Harriet A. Bigelow, wife of said Liberty Bigelow, and the said Eliza M. Gage, Electa M. Johnson, Adaline Parmelee, have, or pretend to have, some interest in said premises. All of which actings & pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator has no remedy without the assistance of the court of equity, to the end, therefore, that the said Liberty Bigelow, David A. Gage, Franklin Parmelee, and Walter S. Johnson, and the rest of the defendants, may
86 respectively, full, true, direct, and perfect answer make, according to the best of their knowledge, information, and belief, to all and singular the matters and charges aforesaid, (your orator hereby waiving, pursuant to the statute, the necessity of the answer of said defendants, or either of them, being put in under their oath, or the oath of them,) and that as fully and particularly in every respect as if the same were here again repeated, and they thereunto particularly interrogated, and more especially that they may respectively answer and set forth the precise condition and nature of the title of each and every said parcels of land and premises above mentioned; and who have any and what interests therein; and whether the said deed and said articles of agreement

of September 15th, 1866, were not intended to be, and are not a mortgage on said premises as collateral security for the repayment to your orator of fifty thousand dollars and interest, borrowed of your orator by these defendants; and whether such security was not intended to be additional and further and collateral security beyond the mere personal security of these defendants; and that they may likewise set forth whether there
87 is or are any other and what incumbrance or incumbrances upon or affecting the said mortgage premises; and, if so, in whom the same is or are vested, and whether the same is or are not subsequently to your orator's said security or how otherwise; and that they disclose and particularly set forth the exact state of the title of said premises as it existed at the date of said deed, and also at the date of filing their said bill; and your orator prays leave, if it shall appear that there are any other persons interested in said property and premises, that he may make them parties hereto hereafter:

Your orator asks the aid of this court in the premises; and that this court will adjudge and decree that said deed to your orator and said agreement back from him to first-named defendants constituted and are a mortgage unto your orator of whatever interest in said premises the said defendants had at the time of making the same, or have since acquired; and that your orator may be relieved by a suitable decree of this court from the execution of his said covenant to convey said premises to said defendants free and clear from all incumbrances
88 and from his said covenants of warranty in said articles of agreement contained, upon your orator releasing and conveying back to said defendants such title or interest in said premises as he acquired from said defendants, when the defendants shall have first paid your orator the moneys aforesaid, or such moneys as they justly owe him; and that an account may be taken, by and under the decree and direction of this honorable court, of what is due and owing to your orator for principal and for interest on his said mortgage or otherwise on said loan; and that the said defendants first above named may be decreed to pay to your orator what may be found due to him on taking such account as aforesaid, including such premiums as he may be obliged to pay for the insuring of the said premises by reason of any default of the said first-named defendants, together with his costs of this suit, by a short day to be appointed by this court for that purpose; or, in default thereof, that the said defendants, and all persons claiming under them or any of them, may be absolutely debarred and foreclosed of and from all right and equity of redemption in or to the said mortgaged premises,
89 and every part thereof, and may deliver up to your orator all deeds, papers, or writings in their custody or power relating to or concerning the said mortgaged premises, or any part thereof; and that said premises may be sold, or so much thereof as shall be necessary, to pay such debt; and that the proceeds of such sale may be paid to your orator after first paying all necessary expenses and charges of such proceedings; and that your orator may have execution against said defendants for the remainder that may be due to your orator, after the proceeds of said sale shall have been ascertained and paid over; but in case it shall be found that the said defendants, and none of them, have any valuable interest in said premises, that then, and in that case, your orator may have execution against them for the amount decreed to be due and owing to him as aforesaid; and that the said defendants may be decreed to pay to your orator his costs of this suit; and that your orator may have such further relief, or may have such other or different relief, as the nature of his case shall require, and as shall be agreeable to

inafter stated, the party of the first part hereby covenants and agrees to sell, and by a good and sufficient deed to convey and assure to the parties of the second part, free and clear of all incumbrance, all those pieces and parcels of land, and the buildings thereon, and the appurtenances thereto belonging, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit: lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen; and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet,
97 thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty feet, to the place of beginning; being the same pieces or parcels of land conveyed by the parties of the second part to the party of the first part by deed bearing even date herewith.

And the said parties of the second part hereby covenant and agree, to and with the said party of the first part, to pay to the said party of the first part for said pieces or parcels of land the sum of fifty thousand dollars, with interest thereon at the rate of ten per centum per annum; which said sum of fifty thousand dollars is to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five eaqual annual instalments from the first day of October, in the year eighteen hundred and fifty-six, that is to say, ten thousand doliars to be paid on the first day of October, eighteen hundred and fifty-seven, and the same amount on the first day of October in each year thereafter until said sum of fifty thousand dollars be paid.

But the parties of the second part shall be, and are hereby, au-
98 thorized to pay said sum of money in larger instalments or payments at the time above specified, or sooner if they, the said parties of the second part, shall desire or choose so to do. Interest on said sum of fifty thousand dollars at the rate aforesaid shall commence on the first day of October, eighteen hundred and fifty-six, and is to be paid at the Tremont Bank, in the city of Boston, semi annually from said first day of October, on all sums remaining unpaid of said fifty thousand dollars.

The said parties of the second part are to have the possession and use, and receive the rents and profits to their own use and benefit, of all the above-described premises during all the time above designated for the payment of said fifty thousand dollars; and the said parties of the second part are to complete the erection of buildings now in course of erection upon said premises, and pay all taxes and assessments levied or imposed thereon during said time; and also to pay all rent or rents payable by virtue of a certain lease bearing date the tenth day of October, A. D. 1853, made by James Crow and Thomas Crow to Theodorus Doty and Daniel Andrews, during said time; also to make all payments
99 which may accrue during said time under and by virtue of certain articles of agreement bearing date the first day of August, A. D. 1855, between Frederick T. Flagler, party of the first part, and Franklin Parmelee, aforesaid, party of the second part therein.

The parties of the second part are to assign to the party of the first part all policies of insurance upon the buildings on said premises now issued, and are to keep said premises well and sufficiently insured during said time, for the use and benefit of the party of the first part.

And when said sum of fifty thousand dollars, with the interest aforesaid, shall be paid by the parties of the second part, or their heirs, assigns, executors, or administrators, to the said party of the first part, or his heirs, assigns, executors, or administrators, the said party of the first part hereby covenants, to and with the parties of the second part, their heirs, assigns, executors, or administrators, to assign to the parties of the second part all such policies of insurance as he may have acquired upon said premises, and also to convey the above-
100 described premises, with the appurtenances and buildings as aforesaid, to the parties of the second part.

It is further mutually covenanted and agreed that all the covenants and agreements herein contained shall be obligatory upon the heirs, executors, administrators, or assigns of the party of the first part and the parties of the second part hereto respectively.

Witness our hands and seals the day and year above written.

DANIEL LAWRENCE. [SEAL.]
LIBERTY BIGELOW. [SEAL.]
WALTER S. JOHNSON. [SEAL.]
DAVID A. GAGE. [SEAL.]
FRANKLIN PARMELEE. [SEAL.]

SEPTEMBER 23, 1856.

SUFFOLK, *ss:*

There personally appeared before me Daniel Lawrence, & acknowledged the foregoing instrument to be his free act and deed.

J. P. WELCH,
Justice of the Peace.

Frank Parmelee & others. Agreement. No. 76729. State of Illinois, Cook County. Filed for record 17th Oct., 1856. Recorded in book of deeds 124, page 71. L. D. Hoard, clerk.

101 And afterwards, to wit, on the twenty-eighth day of October, in the year last aforesaid, came the said parties by their respective solicitors, and filed in the office of the clerk of the said court their certain stipulation in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, pending at Oct. term, 1863, in chancery.

LIBERTY BIGELOW ET ALS. *vs.* DANIEL LAWRENCE. } Original bill.

DANIEL LAWRENCE *vs.* LIBERTY BIGELOW ET ALS. } Cross-bill in the above case.

It is hereby stipulated in the above suit, by the attorneys of the respective parties, that the cross-bill therein filed may be amended by the said Daniel Lawrence or his solicitor by adding the name of Har-
102 riet A. Bigelow as a party to said cross-bill, and that no excep-

tions shall be taken on the ground of the additional parties to said cross-bill.

Chicago, Oct. 28, 1863.

CHARLES A. GREGORY,
Solicitor for Dan'l Lawrence.

McALLISTER, JEWETT & JACKSON,
Solicitors for Liberty Bigelow & others, the Original Complainants, and Defendants in the Cross-bill.

And afterwards, to wit, on the same day and year last aforesaid, came Charles A. Gregory, solicitor for the said Daniel Lawrence, and filed in the office of the clerk of the said court his certain affidavit in the words and figures following, to wit:

103 STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

In the superior court of Chicago, Cook County, State of Illinois, in chancery, pending at the October term, A. D. 1863.

DANIEL LAWRENCE *vs.* LIBERTY BIGELOW, HARRIET A. BIGELOW, David A. Gage, Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, Franklin Parmelee, Adaline Parmelee.	Cross-bill in the case of Liberty Bigelow et als. vs. Daniel Lawrence.

Charles A. Gregory, being duly sworn, states that he is the agent of the said Daniel Lawrence in the case above named, and that the said Harriet A. Bigelow, Walter S. Johnson, and Electa M. Johnson, above named, are not residents of the State of Illinois, so that process of law cannot be served on them; further, that said Eliza M. Gage hath gone out of the State of Illinois, so that process of law cannot be served upon her; and further deponent saith not.

CHARLES A. GREGORY.

Subscribed and sworn to before me this 28th day of October, A. D. 1863.

THOMAS B. CARTER, *Clerk.*

[5-c'ts rev. st'p canceled.]

104 And afterwards, to wit, on the twenty-ninth day of October, in the year last aforesaid, there issued out of the office of the clerk of the said superior court of Chicago a certain people's writ of summons, directed to the sheriff of Cook County; which said writ, together with the return of the said sheriff thereon endorsed, is in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon Liberty Bigelow, Harriet A. Bigelow, David A. Gage, Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, Franklin Parmelee, and Adaline Parmelee, if they shall be found in your county, personally to be and appear before the superior

court of Chicago, of said county of Cook, on the first day of the term thereof, to be holden at the court-house, in the city of Chicago, in said Cook County, on the first Monday of November next, to answer unto Daniel Lawrence in his certain cross-bill of complaint filed in said court on the chancery side thereof.

105 And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Thomas B. Carter, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 29th day of October, A. D. 1863.

[SEAL.] THOMAS B. CARTER, *Clerk.*

[50-cts. intr. rev. stamp canceled.]

Served this writ on the within-named Adaline Parmelee by delivering a copy thereof to her the 29th day of October, 1863.

D. S. HAMMOND, *Sheriff*,
By A. NELSON, *Deputy*.

Afterwards, to wit, on the tenth day of November, 1863, the following order was entered of record, viz:

LIBERTY BIGELOW, DAVID A. GAGE, and Franklin Parmelee,
vs.
DANIEL LAWRENCE. } Bill.

106 And now comes the said defendant, by Charles A. Gregory, his solicitor, having filed his cross-bill herein, and on his motion it is ordered that the said complainants above named be, and they are hereby, required to file their answer to the cross-bill of said defendant within twenty days from this day.

And afterwards, to wit, on the thirtieth day of November, in the year last aforesaid, came the said Liberty Bigelow, David A. Gage, and Franklin Parmelee, and filed in the office of the clerk of the said court their certain replication to the answer of Daniel Lawrence to the original bill of said complainants; which said replication is in the words and figures following, to wit:

In the superior court of Chicago, in chancery.

LIBERTY BIGELOW, DAVID A. GAGE, Franklin Parmelee,
vs.
DANIEL LAWRENCE.

The replication of Liberty Bigelow, David A. Gage, and Franklin Parmelee to the answer of Daniel Lawrence, defendant.

These replaints, now and always saving and reserving to them-
107 selves all and all manner of benefit and advantage of exception which can be taken to the manifold insufficiencies of the said answer, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants.

Without this, that any other matter or thing whatsoever in the said

answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All of which matters and things these repliants are and will be ready and willing to aver and prove as this honorable court shall direct, and they humbly pray as in and by their said bill they have already prayed.

LIBERTY BIGELOW,
DAVID A. GAGE,
FRANKLIN PARMELEE,
By their att's McALLISTER, JEWETT & JACKSON.

McALLISTER, JEWETT & JACKSON,
Complainants' Solicitor.

108 And afterwards, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-four, came Walter S. Johnson, one of the defendants to the cross-bill of Daniel Lawrence filed herein, and filed in the office of the clerk of the said superior court of Chicago his certain answer to said cross-bill of Daniel Lawrence in the words and figures following, to wit:

In chancery, before the superior court of Chicago.

The answer of Walter S. Johnson, one of the defendants to the bill of complaint of Daniel Lawrence, complainant, against Electa M. Johnson, Liberty Bigelow, Harriet A. Bigelow, David A. Gage, Eliza A. Gage, Franklin Parmelee, Adaline Parmelee, and Walter S. Johnson.

This defendant, now, and at all times hereafter, saving and reserving to himself all manner and benefit of advantage of exception to the many errors & insufficiencies in said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defend-
109 ant is advised is material for him to make answer unto, he answers and says that, at the time of the transactions between this defendant and said complainant hereinafter stated, and on or about the 15th of September, A. D. 1856, both the said complainant and the said defendant Liberty Bigelow were and still are citizens of the Commonwealth of Massachusetts; that the said David A. Gage and Franklin Parmelee were and still are citizens of the State of Illinois; that this defendant then was also a citizen of the State of Illinois, but has since become a citizen of the State of Wisconsin; that this defendant and the said David A. Gage, Franklin Parmelee, Liberty Bigelow, and this defendant, were at that time in the business of running lines of omnibusses in the city of Chicago, under the firm name and style of F. Parmelee & Co., but that afterwards, and on or about the third day of November, 1858, this defendant sold out all of his interest in said firm, and ceased to be a member thereof.

This defendant, further answering, says that he admits that the
110 said firm, through the said Liberty Bigelow, did, on or about the said 15th day of September, 1856, at said Medford, in Massachusetts aforesaid, make an application to the said complainant, to lend and advance to the said firm of J. F. Parmelee & Co. the sum of fifty thousand dollars; but he further says that the entire transaction in reference to said application was, when consummated and without any fraud or circumvention on the part of the said firm of F. Parmelee & Co., or any member thereof, and without any accident or mistake on the part of said complainant in regard to the same, or any part thereof, reduced to writing under the hands and seals of the respective parties

thereto, deliberately and understandingly executed and delivered. Wherefore this defendant denies that there was any such verbal agreement or agreement respecting the said sum of money for any other sum of money or any security therefor, as is alleged in said bill of complaint, and he insists that the said complainant is, by the rules and practice of courts of equity, estopped and precluded by means of his cove-
111 nants and deeds respecting said transactions, and more particularly set forth or referred to hereafter, from setting up, alleging, or proving any such verbal agreement or understanding in reference to any of said matters or things covered by and included in the said articles of agreement referred to in and annexed to said bill of complaint; and that the said complainant is also estopped and precluded from alleging or proving that the said transaction manifested by the said articles of agreement and deed referred to in the said bill of complaint, and copies of which are thereto annexed, constitute, as to said complainant, a loan of money or mortgage security therefor, either at law or in equity. Wherefore this defendant says that he denies that the said complainant has or holds any indebtedness against this defendant, secured by any mortgage upon the said premises, or any part thereof, in said bill mentioned, in manner and form as is pretended in said bill of complaint; and he also denies that they, said F. Parmelee & Co., borrowed any money of the said complainant under any such promise, arrangement, or agreement as is pretended and set forth in the said bill
112 of complaint; and this defendant denies that there was any agreement between them and the said complainant respecting a mortgage security upon said premises, any right of redemption, or the making of any defeasance of the said deed in manner or form as is alleged and pretended in and by the said bill of complaint. He avers that the said deed and articles of agreement, together with a certain writing obligatory hereinafter more particularly set out, constitute all the writing made or entered into at the time of the said transaction between the said firm of F. Parmelee & Co. and the said complainant; and he denies that there was any verbal or parol agreement made between the said parties at the time aforesaid, or at any subsequent time, to the effect that said F. Parmelee & Co. should execute, or that the said complainant receive any mortgage on said premises; and, on the contrary thereof, the said complainant, at the time of the making said application to him for the loan by him to said F. Parmelee & Co. of fifty thousand dollars, and during all the negotiations in that behalf, expressly refused to take any mortgage, or aught in the nature of any mortgage, on
113 said premises by way of security for said money, and insisted on having the said transaction in all respects an absolute conveyance by said F. Parmelee & Co. to him of all their interest in said premises, subject to said lease from James and Thomas Crow to Theodorus Doty and Daniel Andrews, (in said bill mentioned;) and that he would pay said F. Parmelee & Co. fifty thousand dollars for the same, and give them back articles of agreement to sell the said premises to them upon certain terms. And this defendant further says that he verily believes, and therefore charges the fact to be, that the said complainant required the said transaction to be put into the form in which it was put for one purpose, amongst others, to conceal an unlawful and corrupt violation of the laws against usury in force, both in the said Commonwealth of Massachusetts and in the State of Illinois, and to evade the consequences thereof, as hereinafter more particularly stated and set forth. Wherefore this court ought not to lend its aid to the said complainant to grant him the relief prayed for in said bill of complaint, or espe-

114 cially to relieve him from the performance of his contract, requiring him to convey to this defendant and said Bigelow, Parmelee, and Gage such title to the said premises free and clear of all incumbrances as is specified in, and within the intent and meaning of, said articles of agreement made and entered into in the manner and under the circumstances as herein set forth and alleged.

And this defendant, further answering, says that, in and by the said articles of agreement between the said complainant and this defendant and said David A. Gage, Franklin Parmelee, and Liberty Bigelow, bearing date the day and year aforesaid, the said complainant did not covenant or agree to re-sell or re-convey the same title to the said premises as was conveyed to him thereto in and by the said deed from this defendant and said Gage, Parmelee, and Bigelow, in said bill mentioned; but the said complainant covenanted and agreed, to and with this defendant and said Gage, Parmelee, and Bigelow, that, upon the said last-named parties paying to him the sum of fifty thousand dollars, and interest thereon as thereinafter stated, to sell and by

115 good and sufficient deed to convey and assure to the said parties, free and clear of all incumbrances, all those pieces and parcels of land, and the buildings thereon and appurtenances thereto belonging, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit: Lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen, (13;) and also that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty feet, to the place of beginning, as by the said articles of agreement will more fully and at large appear, and which are the same premises in said bill of complaint mentioned.

And this defendant further says that the said sum of fifty thou-

116 sand dollars, payable by instalments, as in said articles of agreement specified, was made specifically payable, in and by said articles, at the office of F. Parmelee & Co., in Chicago; and although the said F. Parmelee & Co. were ready and willing with the money at their said office to pay the said several instalments as the same respectively became due as aforesaid, yet the said complainant, not wanting the same, or any or either of them, paid as they respectively became due, waived the payment of each and every thereof, failed and neglected to be present at the said office to receive the said instalments, or any or either of them, either in person or by any agent, not only, but notified the said F. Parmlee & Co. from time to time, as said respective instalments came due, that he, the said complainant, did not want said money, being principal, or any, part thereof, and thereby prevented the said F. Parmelee & Co., who were then and there ready and willing to pay the same, from paying the said fifty thousand dollars as aforesaid, at the time the same was payable in and by the said articles of agreement.

But the said F. Parmelee & Co. have, in fact, paid to the said com-

117 plainant, upon said articles of agreement, at different times from the making thereof, and down to April 3d, 1861, and in different sums, amounting in all to the sum of twenty-seven thousand dollars; have erected and completed upon the said premises a building mentioned in said articles of agreement at a cost and expense to them of upwards of one hundred thousand dollars; that within a reasonable time

after the making of said articles of agreement, they assigned over to the said complainant all such policies of insurance upon said buildings as they had procured, and have at all times since kept said buildings well and sufficiently insured for the use and benefit of said complainant; have paid all taxes and assessments levied or assessed upon said premises, and all of the rent or rents payable by virtue of said lease bearing date the 10th day of October, A. D. 1853, made by James Crow and Thomas Crow to Theodorus Doty and Daniel Andrews, during and since the said period for paying said sum of fifty thousand dollars, and a copy of which said lease, duly certified, is hereto annexed marked "Ex-
118 hibit F," and is made a part of this answer; and the said F. Parmelee & Co. have made all payments which have accrued since the making of said articles of agreement, under and by virtue of certain articles of agreement bearing date the first day of August, A. D. 1855, between Frederick T. Flagler and Franklin Parmelee, mentioned in said first-named articles of agreement, and kept the said articles of agreement and fully performed the same in every particular to be performed and kept on the part of said F. Parmelee & Co., except as prevented as aforesaid, until all of said instalments became due; that the payments aforesaid becoming all due, and said F. Parmelee & Co. ascertaining that the said complainant was wholly unable to convey to them such a title to the said premises as was required within the intent and meaning of his covenants as aforesaid, ceased to make any further payments on said articles of agreement with him after the payment made by them and received by the complainant on the said 3rd day of April, A. D. 1861; that from the said last-mentioned time the said matters
119 rested in silence until on or about the twenty-fifth day of July last past, when the said complainant came to Chicago, aforesaid, and demanded of the said Gage, Parmelee, and Bigelow certain back interest that he alleges to be due him upon said articles of agreement, expressly stating that he did not want any of the principal, or only a small part, if any; whereupon the said Gage, Parmelee, and Bigelow, being ready and willing to pay the said complainant all that was legally and justly due to him upon said articles of agreement, if the said complainant would perform the same on his part, then and there offered and proposed to said complainant to pay him all that was legally and justly due him in this behalf if he, the complainant, would show himself able and willing to convey to them such a title to said premises as he had agreed to convey; but the said complainant, then and there admitting and confessing that he was unable to convey such a title to said premises as aforesaid, then and there offered to give said Gage, Parmelee, and Bigelow a quitclaim deed of said premises, and declared that
120 he should give no other, and that if they did not take that and pay up said moneys he would eject them from the premises.

And this defendant, further answering, says that he is advised and verily believes, and therefore insists, that he is not in any manner estopped, by reason of anything in the said deed from him and said Gage, Parmelee, and Bigelow to said complainant, from alleging that the said complainant is unable to convey such a title to said premises, free and clear of all incumbrances, as is specified within the intent and meaning of his said covenant with them in that behalf, because he says that the said grant and conveyance in and by the said deed is thereby made expressly subject to the rents and conditions provided for and imposed in and by the said lease from said James and Thomas Crow to the said Theodorus Doty and Daniel Andrews, and which had by the said Doty and Andrews been duly assigned and transferred and acquired by said

F. Parmelee & Co. prior to the time of the making of said deed, and the said F. Parmelee & Co. were in possession of said lots number
121 fifteen and sixteen, and said north eight feet of said lot number fourteen, in said block thirteen, under the said assignment of said lease, and under no other right, at the time of making said deed, and which said last-mentioned lots and premises constitute much the largest portion of the premises described in said bill of complaint, viz, about one hundred and eight feet fronting on said State street in the city of Chicago, and upon which, together with said twenty feet described in the said Flagler contract, was erected the said buildings now known as the Garrett Block; that in said deed from this defendant and said Gage, Parmelee, & Bigelow to the complainant as aforesaid, and antecedently to any of the express covenants therein contained, the said conveyance is qualified by the provision in substance and effect following, to wit: The said above-described property being subject in this grant to the rents and conditions provided for and imposed in and by a certain lease made by James and Thomas Crow, parties of the first part, and Theodorus Doty and Daniel Andrews, parties of the second part therein,
122 and bearing date the tenth day of October, 1853, and filed for record in the recorder's office of the county of Cook aforesaid, November twenty-eight, and recorded in book 82, page 682, and also to the payments to be made in and by certain articles of agreement bearing date the first day of August, 1853, between Frederick T. Flagler of the first part, and Franklin Parmelee of the second part therein, for the sale by said Flagler to said Parmelee of part of the above-described premises, and filed for record in the office of said recorder on the 19th day of September, 1855, and recorded in book of deeds ninety-nine, page three hundred and thirty-one, which said lease and articles of agreement, and the moneys thereby required to be paid, are to be kept, performed, and paid by the said Liberty Bigelow, David A. Gage, Franklin Parmelee, and this defendant, parties of the first part, or their heirs and administrators.

And this defendant further says that he is advised, verily believes, and therefore insists that all of the covenants and provisions contained in said deed ought to be construed with reference to the rights
123 and obligations arising upon said lease so far as pertains to the said lessees therein named, as by the said deed, or a certified copy thereof, will, when produced, more fully and at large appear; that in and by the said lease the said lessees covenanted to and with the said James and Thomas Crow, the lessees therein named, that, at the expiration of the time in said lease mentioned, they would yield up the said demised premises to the said lessors in as good condition as when the same were entered upon by said lessees, loss by fire, inevitable accident, or ordinary wear excepted; and further, that if the said term in said lease should be ended at the election of said lessors, their heirs, executors, administrators, or assigns, as in said lease provided, or in any other way, the said lessees, their executors, administrators, and assigns, covenanted and agreed to surrender and deliver up said premises and property peacably to said lessors, their executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if they
124 should remain in the possession of the same ten days after the notice of such default, or after the determination of said lease in any of the ways therein named, they, the said lessees, should be deemed guilty of a forcible detainer of said premises under the statute, and be subject to all of the conditions and provisions above (therein) named, and to eviction and removal, forcibly or otherwise, as by the said lease, when produced, or said certified copy thereof, will more fully and at large appear.

And this defendant further says that the said term in said lease expires by lapse of time on the first day of May, A. D. 1874; that by reason of the said grant by said Gage, Bigelow, and Parmelee, and this defendant, being made subject to all the terms and conditions of said lease imposed upon the lessees therein named, and this defendant and said Gage, Bigelow, and Parmelee being expressly obligated by said deed to perform and comply with the same, and all of the covenants in said deed being subject to the rights of said James and Thomas Crow, their heirs or assigns, and the recognition of title to said premises described in said lease in the said lessors, this defendant is advised, verily
125 believes, and therefore insists, that he is not estopped by anything contained in said deed from alleging that the said complainant is unable, from want of title in himself to the said premises, to comply with said covenant to sell and convey said premises. And this defendant avers that the said complainant had not, at the time the said moneys became due and payable in and by said articles of agreement between him, this defendant, and said Gage, Bigelow, and Parmelee, as aforesaid, at no time since, nor has he now, any title whatever in or to the said premises described in said lease, and parcel of the same premises mentioned in the said bill of complaint, except the tenure and lease-hold interest created in and by the said lease, and transferred to said complainant by the said deed from this defendant and said Gage, Bigelow, and Parmelee to the said complainant as aforesaid.

And this defendant further says that, as he is advised and believes, the paying of the moneys which may remain due under and by virtue of the said articles of agreement between said complainant and this defendant, and said Gage, Bigelow, and Parmelee aforesaid, and the
126 conveyance by the said complainant required in and by the same articles of said premises, are simultaneous acts; and that if the said complainant cannot and will not convey such title to the same as is required by the true construction, intent, and meaning of said articles of agreement, he, the said complainant, is not entitled to have said moneys, or any part thereof, and this court ought not to decree said defendant to pay the same, or order the said premises sold for making the said moneys, or any part thereof.

And this defendant, further answering, says that if this court shall be of opinion that the said complainant is not precluded by the several matters and things aforesaid from showing and proving that the said transaction constituted a loan of money, and the said conveyance by this defendant and said Gage, Bigelow, and Parmelee to the said complainant aforesaid, and the entering into the said articles of agreement as aforesaid, constitute a mortgage security upon the said premises as is alleged and claimed in and by the said bill of complaint, then this defendant claims and insists that the said transactions was and is
127 illegal, corrupt, and usurious, as hereinafter next stated and set forth.

And this defendant states and shows to this court that, before and at the time of the entering into of the said transactions, or any of them, there was a statute in force in the said Commonwealth of Massachusetts, entitled "An act concerning usuary," as follows, that is to say:

"*Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, as follows:*

"SECTION 1. Whenever in any action brought on any contract or assurance for the payment of money, hereafter made, it shall appear that a greater rate of interest has been directly or indirectly reserved, taken,

or received than is allowed by law, the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the interest unlawfully reserved or taken, and no more.

"SECTION 2. Whenever a greater rate of interest than is allowed by law shall hereafter be paid, the party paying the same may recover back three-fold the amount of the unlawful interest so paid, and no more.

128 "SECTION 3. So much of the second and third sections of the thirty-fifth chapter of the revised statutes as is inconsistent with this act is hereby repealed."

As by a certified copy of the said statute hereto annexed, marked "Exhibit G," and made a part of this answer, will more fully and at large appear.

And this defendant further says that, by the first section of said thirty-fifth chapter of the revised statutes of said Commonwealth of Massachusetts, in force before and at the time of the entering into by said parties, of any or either of the transactions hereinafter stated, it was enacted as follows:

"SECTION 1. The interest of money shall continue to be at the rate of six dollars, and no more, upon one hundred dollars, for a year, and at the same rate for a greater or less sum, and for a longer or a shorter time."

As by a copy of said act, when produced, will appear.

And this defendant, further answering, says that, prior to the 31st day of January, A. D. 1857, and on or about the 15th day of September, A. D. 1856, this defendant and said Gage, Bigelow, and Parmelee,

129 then composing the said firm of F. Parmelee & Co., and who having before then, and on or about the 9th day of July, A. D. 1855, procured the assignment from said Doty, and through said Andrews, to said F. Parmelee, for the use and benefit of said firm, of the said lease from said James and Thomas Crow to said Doty and Andrews; and said firm being the parties beneficially interested in said contract from said Flagler to said Parmelee as aforesaid, a copy whereof, duly certified and marked "Exhibit H," is hereto annexed as a part hereof; and the said firm, having entered into possession of said premises, and commenced the construction of a block of buildings thereon, became in want of money to carry on said work, and, being so in want of money, did through the said Liberty Bigelow, who lived in Massachusetts, and was related to the said complainant by marriage, apply to the said complainant, who was accustomed to lend money, to loan to the said firm the sum of fifty thousand dollars, to enable them to carry on said work on said premises, then and there informing the said complainant

130 as to the nature and character of the right and interest of said firm in the said premises, and offering him security theron for the repayment of said money so proposed, as aforesaid, to be borrowed by said firm of said complainant.

And this defendant, further answering, says that afterwards, and on or about the said 15th day of September, A. D. 1856, it was corruptly, and contrary to the form of the statutes both of said commonwealth and of said State of Illinois in such case made and provided, agreed by and between said complainant, this defendant, and said Gage, Bigelow, and Parmelee, that he, the said complainant, would lend and advance to this defendant and said Gage, Bigelow, and Parmelee the sum of fifty thousand dollars, to be repaid to the said complainant by this defendant and said Gage, Bigelow, and Parmelee in five years, by instalments of ten thousand

dollars a year, with interest on said sum to be loaned, for giving such day of payment as aforesaid, to be paid by said F. Parmelee & Co. at the rate of twelve per centum per annum, and the payment of said sum of fifty thousand dollars and interest thereon by this defendant and said
131 Gage, Bigelow, and Parmelee, to the complainant to be secured by means of said premises; that in order to express said corrupt and unlawful agreement in writing and give and receive the said security on said premises, and at the same time conceal and disguise as much as possible the real nature of said transaction, by the agreement of the parties aforesaid the said deed of the said premises by this defendant, said Gage, Bigelow, and Parmelee, and the said wives of said last-named parties respectively, to the said complainant, was prepared substantially as set out in said bill of complaint and also the said articles of agreement bearing date said 15th day of September, A. D. 1856, in and by which the said complainant covenanted and agreed to and with this defendant and said Gage, Bigelow, and Parmelee, upon the payment by them of said fifty thousand dollars, to sell and convey the said premises to them. And this defendant and said Gage, Bigelow, and Parmelee covenanted and agreed to and with the said complainant to pay him for said pieces or parcels of land the sum of fifty thousand dollars,
132 with interest thereon at the rate of ten per centum per annum, which said sum of fifty thousand dollars was to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five equal annual instalments, from the first day of October, in the year 1856, that is to say, ten thousand dollars to be paid on the first day of October, 1857, and the same amount on the first day of October in each year thereafter until the said sum of fifty thousand dollars be paid; interest on said sum of fifty thousand dollars at the rate aforesaid to commence on the first day of October, 1856, and to be paid at the Tremont Bank, in the city of Boston, semi-annually from said first day of October, on all sums remaining unpaid of said fifty thousand dollars, as by a copy of said articles of agreement attached to said bill of complaint, and to which reference is hereby made as a part hereof, will more fully appear.

And this defendant further says that, further to reduce to writing the said corrupt and unlawful agreement, and to conceal and disguise the real nature and character of said transaction, this defendant and
133 said Gage, Parmelee, and Bigelow, by the privity, procurement, and direction of the said complainant, and to enable him to obtain the other two per centum per annum upon said sum of fifty thousand dollars so to be loaned as aforesaid, prepared, signed, and sealed their certain bond or writing obligatory to the said complainant, in and by which they acknowledged themselves to be held and firmly bound unto the said complainant in the penal sum of three thousand dollars, lawful money of the United States, for the payment of which well and truly to be made they bound themselves, their heirs, executors, or administrators, jointly, severally, and firmly by the said presents, sealed with their seals the 15th day of September, in the year of our Lord one thousand eight hundred and fifty-six, to which there was a condition thereunder written, to the effect that if this defendant and said Gage, Bigelow, and Parmelee should, on the first day of October, one thousand eight hundred and fifty-seven, deliver at the Tremont Bank, Boston, for the said complainant, the notes of this defendant and said Gage, Bigelow,
134 & Parmelee, payable in six and twelve months at said bank, for such sum as the interest at two per centum per annum should amount to on all the moneys remaining unpaid on said first day of October, upon certain articles bearing even date therewith, made by said complainant to

and with this defendant and said Gage, Bigelow, and Parmelee, for the conveyance of certain real estate by said complainant to this defendant, and said Gage, Bigelow, and Parmelee, as therein described, and should, on the first day of October, in each year after 1857, deliver also at said bank the notes of this defendant and said Gage, Bigelow, and Parmelee, or the survivor or survivors of them, for the interest at two per centum on each sum as should remain unpaid on said articles until the whole sum of fifty thousand dollars mentioned in said articles be paid, and should make said notes payable at said bank to said complainant in six and twelve months from the time of so making the same, and should pay, or cause to be paid, all such notes so given, then said obligation to be void and of no effect, otherwise to remain in full force and
135 effect, as by a copy of said bond or writing obligatory hereto annexed, marked "Exhibit I" and made a part of this answer, will more fully and at large appear.

And this defendant further says that afterwards, prior to the first day of January, A. D. 1857, and on or about the first day of October, A. D. 1856, in pursuance of said corrupt and unlawful agreement and the design aforesaid, and to carry the same into effect, he and the said Gage, Bigelow, and Parmelee delivered to, and the said complainant accepted and received the said deed of said premises in said bill of complaint mentioned, and also the said bond or writing obligatory, and the said complainant, to wit, at Chicago aforesaid, delivered to this defendant and said Gage, Bigelow, and Parmelee the said articles of agreement. And this defendant further says that the said fifty thousand dollars in said bill of complaint mentioned is the same sum of fifty thousand dollars so agreed to be loaned as aforesaid, and not other or different, and the same was loaned and advanced by the said complainant to this defendant and said Gage, Bigelow, and Parmelee, at the time in said
136 bill mentioned, usuriously and corruptly, under and in pursuance of the said corrupt and unlawful agreement so made as aforesaid, and not otherwise, and the said deed and articles of agreement were given and received as security for the repayment of said loan, and not otherwise; which said agreement, and the transaction aforesaid, was made with reference in all respects to the laws of the State of Illinois, and is, as this defendant is advised and believes, to be governed by the laws of said State, wherein the said lands are situate and the said contract was made and principally to be performed.

And this defendant further says that, in pursuance and part performance of said corrupt and unlawful agreement, the said promisory notes were made and given as required by said bonds, and on or about the 26th day of March, A. D. 1857, this defendant and said Gage, Bigelow, and Parmelee paid to the said complainant, as and for interest on the said loan of fifty thousand dollars at the rate of twelve per centum, the sum of three thousand dollars; on or about the 24th day of Septem-
137 ber, A. D. 1857, three thousand dollars; on or about the 27th day of March, A. D. 1858, three thousand dollars; on or about the 28th day of September, A. D. 1858, three thousand dollars; and the said Gage, Bigelow, and Parmelee, on or about the 28th day of March, A. D. 1859, paid the said complainant, as and for the interest on said loan at the rate of twelve per centum per annum as aforesaid, the sum of three thousand dollars; and on or about the 26th day of September, A. D. 1859, the sum of three thousand dollars; on or about the 2nd day of April, A. D. 1860, the sum of three thousand dollars; on or about the 27th day of September, A. D. 1860, the sum of three thousand dollars; and on or about the 29th day of March, A. D. 1861, the

sum of three thousand dollars, amounting in all to the sum of twenty-seven thousand dollars, which this defendant and said Gage, Bigelow, & Parmelee, and from and after November, 1858, the said Gage, Bigelow, and Parmelee, have paid to the said complainant, as and for the interest alone upon the said sum of fifty thousand dollars, under and in pursuance of said corrupt and unlawful agreement, and for forbearing and giving day of payment of said sum so loaned as aforesaid.

138 And this defendant, further answering, says that, being advised that the said mortgage security in said bill of complaint mentioned, and the said corrupt and unlawful agreement aforesaid, are subject to the laws of the said State of Illinois, he insists that by reason thereof, and of the making of the said corrupt and usurious agreement, as aforesaid, the said complainant forfeited three-fold the amount of the whole interest so reserved as aforesaid; that by reason of the said complainant taking as aforesaid interest on the said sum of fifty thousand dollars, at the rate of twelve per centum per annum, under and in pursuance of said corrupt agreement as aforesaid, the said complainant, by the statute in such case made and provided and in force at the time of the making of said corrupt agreement, did thereby forfeit three-fold of the whole interest so taken as aforesaid.

And this defendant further says that, if the court should be of opinion that the said corrupt and unlawful agreement is subject to the laws of the Commonwealth of Massachusetts, and governed thereby, then

139 this defendant insists that by the statutes of said commonwealth, in force at the time of the making of said contract and above set out, the said complainant, by reason of said agreement, reserving twelve per centum per annum as interest on said sum of fifty thousand dollars, and taking such interest thereon at that rate as aforesaid, did thereby forfeit three-fold of the amount of the interest thus unlawfully reserved or taken.

And this defendant further says that, if upon taking an account of the amount claimed to be due from this defendant to the said complainant upon said alleged debt and security in said bill of complaint mentioned, any sum for principal or interest should be found to be due to the said complainant, (but that there is any sum due to him this defendant denies,) then this defendant insists that the said sums so paid to the said complainant as aforesaid for such interest, under said corrupt and unlawful agreement, ought to be applied in payment of such sum so found due to the extent of the amount so paid as aforesaid.

And this defendant, further answering, insists that, upon a

140 proper account taken in respect to the moneys due to the said complainant upon the article of agreement aforesaid, and of the forfeiture incurred by the said complainant, by reason of the unlawful, corrupt, and usurious agreement aforesaid, considered as an agreement for a loan of money, as claimed by the said complainant, it will be found that nothing is due to the said complainant on account of the same, and that the said forfeiture largely exceeds the amount claimed to be due by the said complainant upon or by reason of the said loan. And this defendant therefore insists that the said complainant ought to be compelled to surrender up the said articles of agreement, and bond to be cancelled, and to release and convey the said premises described in the said articles of agreement to said Bigelow, Parmelee, and Gage, or the person or persons entitled thereto, if the said transaction shall be considered by the court to constitute a loan of money.

And this defendant, further answering, says that, at the time of the sale by him to the said Bigelow, Parmelee, and Gage of all his interest

in and to the business and property of said firm of F. Parmelee
141 & Co., and of his withdrawal from said firm as hereinbefore stated, the said Bigelow, Parmelee, and Gage, by a certain agreement in writing, under their hands and seals, covenanted and agreed to assume, pay, and discharge all the lawful debts and liabilities of the said firm, and to save and keep harmless this defendant in respect of the same; that the agreements with the said complainant hereinbefore set forth were existing at the time of such sale, and the liabilities thereon, if any, were and are the liabilities of said firm of F. Parmelee & Co. And this defendant claims and insists that, if anything shall be found to be due and owing to the said complainant on account of said agreements regarded as constituting an agreement for a loan of money, then the said complainant ought, in justice and equity, to be required to exhaust the particular security held by him therefore before being allowed to resort to the personal responsibility of the said parties or to obtain any personal decree against this defendant.

And this defendant, further answering, expressly denies all
142 and all manner of unlawful combination and confederacy wherewith he is charged in and by the said bill of complaint; without that any matter, cause, or thing in the said bill of complaint contained, and not herein and hereby well and sufficiently answered, confessed and avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All of which several matters and things this defendant is willing to aver, maintain, and prove as this honorable court shall direct, and he humbly prays to be hence dismissed with his reasonable costs and charges by him in this behalf most wrongfully sustained.

(Signed) WALTER S. JOHNSON.

GOODRICH, FARWELL AND SMITH,
Sol'rs and of Counsel.

And afterwards, to wit, on the same day and year last aforesaid, came Walter S Johnson, and filed in the office of the clerk of the said superior court of Chicago his certain cross-bill; which said cross-bill is in the words and figures following, to wit:

143 In the superior court of Chicago, in chancery.

To the honorable the judges of the superior court of Chicago, in chancery sitting:

The cross-bill of complaint of Walter S. Johnson to the bill of complaint of Daniel Lawrence, heretofore exhibited in this honorable court against him and Electa M. Johnson, his wife; Liberty Bigelow and Harriet A. Bigelow, his wife; Franklin Parmelee and Adaline Parmelee, his wife; and David A. Gage and Eliza M. Gage, his wife, respectfully represents and shows unto your honors that, on or about the 15th day of September, A. D. 1856, the said Daniel Lawrence, then and now residing in the town of Medford, in the State of Massachusetts, (and who, together with the said Liberty Bigelow, Franklin Parmelee, and David A. Gage, your orator prays may be made parties defendant to this your orator's cross-bill of complaint,) made and entered into an agreement in writing with your orator and the said Bigelow, Parmelee, & Gage, under his hand and seal, and also under the hands and seals of your
144 orator and the said Bigelow, Parmelee, and Gage, wherein and whereby the said Daniel Lawrence covenanted with and agreed

in substance that, upon the payment to him by your orator and the said Bigelow, Parmelee, and Gage, of the sum of fifty thousand dollars, and interest thereon as therein stated, he would sell and, by a good and sufficient deed, convey and assure to your orator and the said Bigelow, Parmelee, and Gage, free and clear of all incumbrances, all those pieces and parcels of land, and the buildings thereon, and the appurtenances thereunto belonging, situate, lying, and being in the city of Chicago, in the county of Cook, and State of Illinois, and known and described as follows, to wit: Lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen; and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line
with State street, twenty (20) feet, thence east one hundred and
145 fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty feet, to the place of beginning. And your orator and the said Bigelow, Parmelee, and Gage, in and by the said agreement, covenanted and agreed to pay to said Daniel Lawrence for said pieces or parcels of land the sum of fifty thousand dollars, with interest at the rate of ten per cent. per annum, as follows: The said sum of fifty thousand dollars to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five eaqual annual instalments, from the first day of October, A. D. 1856; that is to say, ten thousand dollars to be paid on the first day of October, 1857, and the same amount on the first day of October in each year thereafter until said sum of fifty thousand dollars should be paid; your orator & the said Bigelow, Parmelee, and Gage being authorized, however, to pay said sum of money in larger instalments or payments at the time above specified, or sooner if they should choose to do so, interest on said sum of fifty thousand dollars, at the rate aforesaid,
to commence on the first day of October, 1856, and to be paid at
146 the Tremont Bank, in the city of Boston, semi-annually, on all sums remaining unpaid. And it was further provided in and by said agreement that your orator and the said Bigelow, Parmelee, and Gage should have the possession and use, and receive the rents and profits to their own use and benefit, of all the said premises during all the time designated for the payment of fifty thousand dollars; that they should complete the erection of the buildings then in course of erection on said premises, pay all taxes and assessments levied or imposed thereon during said time, and also pay all moneys reserved in and which were payable by virtue of a certain lease and agreement referred to in said agreement, and becoming due during said time; and that they should assign to said Lawrence all policies of insurance upon the buildings on said premises there issued, and should keep said premises well and sufficiently insured during said term for the use and benefit of said Lawrence, as by the said agreement, reference being thereunto had, will more fully and at large appear.

Your orator further represents & shows unto your honors that
147 he and the said Liberty Bigelow, Franklin Parmelee, and David A. Gage, in pursuance of the terms of said agreement, and their covenants therein contained, immediately after the execution thereof, proceeded to complete the buildings then in process of erection upon said premises, and refered to in said agreement, and did in fact finish and complete the same with all reasonable diligence, and in so doing expended a large sum of money, to wit, the sum of one hundred thousand dollars and upwards; and afterwards, and on or about the 3rd day

of December, A. D. 1858, your orator sold and conveyed to the said Liberty Bigelow, Franklin Parmelee, and David A. Gage all his right, title, and interest in and to the said premises, and in and to the agreement aforesaid with the said Daniel Lawrence, since which time your orator has had no interest in the said premises, or in the rents, profits, use, or income thereof, and, as your orator believes and charges, the said Daniel Lawrence had actual notice of the sale and conveyance aforesaid by your orator to the said Bigelow, Parmelee, and Gage, at or about the time thereof, and long before the instituting of the proceedings by
148 him in this court hereinafter mentioned.

Your orator further states that the deed of conveyance for the said premises, given by your orator to the said Bigelow, Parmelee, and Gage, was duly executed and acknowledged by your orator and his wife, and was filed for record in the recorder's office, within and for the said county of Cook, on the 4th day of November, A. D. 1858, and was afterwards duly recorded in said office in book 157 of deeds, at page 469, which record, your orator charges was and is sufficient notice to the said Lawrence of the sale and conveyance aforesaid by your orator.

Your orator further represents and shows unto your honors that, up to the time of the sale and conveyance by him to the said Bigelow, Parmelee, & Gage as aforesaid, they, the said Bigelow, Parmelee, & Gage, and your orator, had in all respects fully complied with their covenants and agreements contained in the agreement aforesaid with said Lawrence, excepting only the payment of the instalments of the said principal sum of fifty thousand dollars, the payment of which was prevented and expressly waived by the said Lawrence; that they did im-
149 mediately after the execution of said agreement assign to said Lawrence the policies of insurance then issued upon the buildings standing upon said premises, and kept the buildings upon said premises insured for the benefit of said Lawrence; that they paid all the moneys reserved in and by the lease and agreement referred to in said agreement; paid all taxes and assessments levied or imposed upon said premises; and also paid to the said complainant the interest on the said sum of fifty thousand dollars, which by the terms of said agreement had then become due and payable.

And your orator further states upon information and belief that, since the sale and conveyance by your orator as aforesaid, the said Bigelow, Parmalee, & Gage have in like manner continued its insurance upon said premises for the benefit of the said Lawrence; paid all taxes and assessments levied or imposed upon said premises; and paid all the moneys reserved in the lease and agreement refered to in said agreement; and paid all the interest maturing and becoming due upon
150 the said agreement up to the first day of April, A. D. 1861; and paid the same at the place and in the manner specified in said agreement. And in respect to the payment of the said principal sum of fifty thousand dollars, your orator, partly of his own knowledge and partly upon information and belief, insists and states the fact to be that no part of the same was ever demanded of the said Lawrence at the place provided for the payment of the same in said agreement; that at the date of said agreement the said Bigelow, Parmelee, & Gage, and your orator, composed the firm of F. Parmelee & Co., mentioned in said agreement, and had their office and place of business in the city of Chicago, in the county of Cook aforesaid, and, after the sale and conveyance by your orator as aforesaid, the said firm of F. Parmelee & Co. was composed of the said Bigelow, Parmelee, and Gage, who have ever since continued the office and place of business of said firm at the same

place; that said firm of F. Parmelee & Co. was at all times, when the instalments of said principal sum became due and payable according to the terms of said agreement, ready, able, and willing to pay
151 the same at its office aforesaid, but that neither the said Lawrence, nor any person or persons on his behalf, ever applied at said office therefor, or was present to receive the same; and the said Lawrence in substance, by his letters and statements, declined to receive the said principal, or any part thereof, in the manner and at the times provided in said agreement, in consequence of which the said instalments were not, nor was any or either of them, paid to the said Lawrence.

Your orator further represents and shows unto your honors that the whole amount paid by the said Bigelow, Parmelee, and Gage, & your orator, on account of the said sum of fifty thousand dollars & interest thereon, is twenty-seven thousand dollars, all of which was paid on and before the third day of April, 1861, and that by the term of said agreement the last instalment of the said fifty thousand dollars was payable at the office of said F. Parmelee & Co. on the first day of October, 1861; that said Bigelow, Parmelee, & Gage were at the said last-men-
152 tioned date able, ready, and willing to pay to the said Lawrence the said sum of fifty thousand dollars, and the interest unpaid thereon, and have ever since been, and still are, able, ready, and willing so to do, upon receiving from the said Lawrence a deed of the premises described in the said agreement aforesaid, conveying to them free and clear of all incumbrances the said pieces or parcels of land, according to the covenants of the said Lawrence in the said agreement contained, but that the said Lawrence has never been ready or willing so to do, and your orator expressly charges that the said Lawrence is unable by reason of the defects in his own title to said premises to comply with and perform his covenants aforesaid in that behalf.

Your orator further shows unto your honors that the whole matter respecting the said sum of fifty thousand dollars and the interest thereon, from and after the first day of April, 1861, and the payment of the same, and respecting the conveyance of the said premises by the said Lawrence in pursuance of his covenants aforesaid, remained in comparative quietness between the said Lawrence and the said
153 Bigelow, Parmelee, and Gage until about the 25th day of July, A. D. 1863, when the said Lawrence came to the city of Chicago, and without offering to, or, so far as your orator is advised, pretending that he could comply with his covenants and agreement aforesaid, respecting the conveyance of said premises, demanded of the said Parmelee, Gage, & Bigelow payment of the said sum of fifty thousand dollars and interest thereon, with which demand of the said Lawrence the said Bigelow, Parmelee, & Gage refused to comply unless the said Lawrence would, on his part, comply with and perform his covenants and agreements respecting the conveyance of said premises; that said Lawrence then gave out and pretended that he was not bound to convey the said premises free and clear of all incumbrances, or to assume any obligation or liability respecting the title of the same, and threatened to institute proceedings at law against the said Bigelow, Parmelee, & Gage, and those in possession of said premises, unless the said sum of fifty thousand dollars and interest was paid, and claiming and pretending that the sum of fifty thousand
154 dollars was a loan of money by him to your orator, and the said Bigelow, Parmelee, & Gage, and that his only claim upon said premises was security for the payment of said money; that in pursuance

of his threat aforesaid, and his claim aforesaid—that is, his interest in said premises was only as security for the payment of the said sum of fifty thousand dollars and interest thereon—the said Lawrence afterwards, and on or about the 6th day of October, A. D. 1863, exhibited and filed in this honorable court against the said Liberty Bigelow and Harriet A. Bigelow, his wife; David A. Gage and Eliza M. Gage, his wife; Franklin Parmelee and Adaline Parmelee, his wife, (then living but since deceased;) and your orator and Electa M. Johnson, his wife, his certain bill of complaint, alleging therein, in substance and amongst other things, that on or about the 15th day of September, 1856, the said Liberty Bigelow, on behalf of himself, your orator, and said Parmelee and Gage, who were then partners in business, in the city of Chicago, engaged in the omnibus business, and other business, under the
155 firm name of F. Parmelee & Co., applied to him for a loan of fifty thousand dollars, on their own personal security and such other as might be agreed upon, and offering and agreeing in case said loan was made to pay interest thereon, or so much as should from time to time remain unpaid at the rate of ten per cent. per annum, and to pay the principal at such times as was provided in an agreement, dated the 15th day of September, 1856, attached to, and made an exhibit to said bill of complaint, marked Exhibit "E," which is the same agreement between said Lawrence and the said Bigelow, Parmelee, Gage, and your orator above mentioned; that the said Lawrence accepted the terms aforesaid, and advanced to said F. Parmelee & Co. the said sum of fifty thousand dollars, in the State of Massachusetts, and that the same was used in the business of said firm; that on or about the 15th day of September, 1856, your orator and the said Bigelow, Parmelee, & Gage made to the said Lawrence a mortgage upon the premises described in Exhibit "E" of said bill, (meaning the same premises hereinbefore
156 described,) and that at their instance and for their accommodation the said Lawrence consented that said mortgage security should be effected by their executing and delivering to said Lawrence a warranty deed, absolute in form, and that the said Lawrence should thereupon execute the said agreement set forth in said bill as "Exhibit E," as aforesaid, as a defeasance; that said arrangement was carried out by the execution of a deed by your orator and the said Bigelow, Parmelee, and Gage, their wives joining therein, to the said Lawrence, a pretended copy of which is attached to said bill as Exhibit "D," and by the execution by said Lawrence of the agreement aforesaid, both bearing date the said 15th day of September, A. D. 1856, although the same were not in fact delivered until about the 16th day of October, following, owing to the delays incident to the perfecting of a transaction between parties residing at a distance from each other; that the intention of said deed and agreement was simply to give said Lawrence a mortgage upon said premises as security for the said sum of fifty thousand
157 dollars and interest thereon; that said sum of fifty thousand dollars has long since become due and payable, but has not been paid, nor has any part of the same been paid to the said Lawrence, or to any one for him, and that no part of the interest, which has accrued thereon since the first day of April, 1861, has been paid, but up to that date the interest was fully paid; that said Lawrence had, shortly before the filing of said bill, applied to the parties defendants therein for the payment of said fifty thousand dollars and interest thereon, but that they have neglected and refused to pay the same, alleging that he, said Lawrence, had failed to, and was wholly unable to, comply with the covenants in said agreement contained to be kept and performed on his p[illegible]

by reason of his want of title to a large part of said premises; that he, said Lawrence, does not know what his title in and to said premises, or any part thereof, may be, but that he is ready, and willing, and offers to release and convey to such persons as may be entitled to receive it, just such interest and title in and to said premises as he received from
158 the said defendants in said bill, and to assign all policies of insurance by him held thereon, upon the payment to him of said sum of fifty thousand dollars and the interest due thereon, or such sum as may be decreed to be due of said principal and interest by the court. And the said Lawrence further, in and by his said bill of complaint, claims and pretends that your orator, and the said Bigelow, Parmelee, and Gage, are estopped by their deed to him, and the covenants therein contained, from setting up or alleging that said Lawrence is unable to perform his agreement to convey said premises by reason of want of title thereto, or by reason of any defect of title thereto whatever, unless such defect or want of title has happened by some act of omission of his, and alleges that he has not done or permitted any act or thing impairing said title or encumbering the same; that he was never in possession of said premises, either before or after the execution of said deed and agreement, but that the defendants to said bill, or some of them, have had
159 and kept possession thereof, and received the rents of the same; and praying for an answer from your orator and his wife, the said Bigelow and his wife, the said Parmelee and his wife, and the said Gage and his wife, (but without oath,) to all and singular the allegations of said bill, and for the aid of this honorable court in the premises, that said deed and agreement may be decreed to constitute a mortgage, and that the said Lawrence may be relieved from the execution of his covenants to convey said premises free and clear of all incumbrances, and from his covenants of warranty in said agreement contained upon releasing such title or interest, as he has acquired from the defendants to said bill when said defendants shall have paid the moneys aforesaid, and that an account might be taken of what was due to him for principal and interest on said pretended loan, and that your orator and the said Bigelow, Parmelee, & Gage might be decreed to pay the same with costs of suit by a short day to be appointed by the court for that purpose, or, in default thereof, that the said defendants in said bill
160 named, and all persons claiming under them, or any of them, might be absolutely barred and precluded of and from all right and equity of redemption in and to the said premises, and every part thereof, and may deliver up to the said Lawrence all deeds, papers, and writings in their custody or power relating to the said premises, and that said premises may be sold, or so much thereof as should be sufficient to pay such debt, and the proceeds paid over to said Lawrence after paying costs and expenses of such proceedings, and that the said Lawrence might have execution against said defendants for the remainder that may be due to him after the proceeds of said sale shall have been paid over, and for general relief as by the said bill of complaint now remaining on file in the office of the clerk of this court, reference being thereunto had, will more fully & at large appear, and to which your orator prays leave to refer for greater particularity.

And your orator further represents and shows unto your honors that he has appeard to and answered the said bill of complaint so exhibited against him as above set forth, admitting in substance that he
161 and the said Liberty Bigelow, Franklin Parmelee, and David A. Gage were, on the 15th day of September, 1856, partners in the

business of running lines of omnibuses in the city of Chicago, but that your orator ceased to be a member of said firm on or about the 3rd day of March, 1858, having then sold out all of his interest therein; that said firm did, on or about the said 15th day of September, 1856, through said Liberty Bigelow, at Medford, in the State of Massachusetts, apply to said Lawrence for a loan of fifty thousand dollars, but that the entire transaction, in reference to said application, was, when consumated, and without any fraud or circumvention on the part of said F. Parmelee & Co., or any member thereof, and without any accident or mistake on the part of said Lawrence, reduced to writing under the hands and seals of the respective parties thereto; and denying any such verbal agreement respecting said sum of money, or any security therefor, as is alleged in said bill; and insisting that said Lawrence is estopped by his covenants and deeds from setting up, alleging, or
162 proving any such verbal agreement or understanding in reference to any matters or things included in the articles of agreement referred to in, and annexed to, said bill of complaint, and also estopped from alleging or proving that said transaction manifested by the said agreement and the deed referred to in said bill constitute, as to said Lawrence, a loan of money or mortgage security therefor, either in law or equity; and denying also that said Lawrence has or holds any indebtedness against your orator, secured by any mortgage upon said premises, or any part thereof, in said bill mentioned, in manner and form as is pretended in said bill of complaint, or that said F. Parmelee & Co. borrowed any money of said Lawrence under any such promise or arrangement or agreement as is set forth in said bill, or that there was any agreement between them and said Lawrence respecting a mortgage security upon said premises, the right of redemption, or the making of any defeasance of the said deed, in manner or form as is alleged and pretended in said bill; averring that said deed and articles of agreement, together with a certain other writing ob-
163 ligatory set forth in said answer, constitute all the writings made or entered into at the time of said transaction between said F. Parmelee & Co. and said Lawrence, and denying that there was any verbal agreement then or subsequently made between the parties to the effect that F. Parmelee & Co. should execute, or said Lawrence receive, any mortgage on said premises; on the contrary thereof, that said Lawrence expressly refused to take any mortgage, or anything in the nature of a mortgage, on said premises, by way of security for said money, & alleging that he insisted on having said transaction in all respects an absolute conveyance by said F. Parmelee & Co. to him, of all their interest in said premises, subject to the lease in said bill mentioned, and that he would pay said F. Parmelee & Co. fifty thousand dollars therefor, and give them back articles of agreement to sell the said premises to them upon certain terms.

And your orator in and by his said answer further, upon his belief, alleged and charged it to be the fact that said Lawrence required the transaction to be put into the form into which it was put for the purpose, amongst others, of concealing an unlawful and corrupt violation
164 of the laws against usury, in force both in the State of Illinois and in the State of Massachusetts, and to evade the consequences thereof; and, for that reason, this court ought not to give its aid to said Lawrence to grant him the relief prayed for in his bill, or especially to relieve him from the performance of his contract, denying that said Lawrence by the articles of agreement between him and said F. Parmelee & Co. covenanted and agreed to re-sell or re-convey the same.

to the said premises as was conveyed to him by said Parmelee & Co., and insisting that he covenanted and agreed to and with said F. Parmelee & Co. that, upon the payment by them to him of the sum of fifty thousand dollars, and interest thereon, as thereinafter stated, to sell, and by a good and sufficient deed to convey and assure to said parties, free & clear of all incumbrances, all those pieces and parcels of land, and the buildings thereon, and the appurtenances thereto belonging, particularly described in said bill; that said sum of fifty thousand dollars was made specifically payable in and by said articles of agreement, at the office of F.
165 Parmelee & Co., in Chicago; and although said F. Parmelee & Co. had the money at the office to pay the said several instalments as they respectively became due, and were ready and willing to pay the same, yet said Lawrence waived the payment of each and every thereof, and failed and neglected to be present at said office to receive said instalments, or any or either of them, either in person or by agent, and also notified said F. Parmelee & Co., from time to time, that he did not want the principal of said money, or any part thereof, and so prevented the said F. Parmelee & Co. from paying said money as provided in said articles of agreement; but that said F. Parmelee & Co. have, in fact, paid said Lawrence upon said articles of agreement from the time of the same down to April 3rd, 1861, at different times, the sum of twenty-seven thousand dollars; have completed the building upon said premises mentioned in said articles of agreement at a cost of over one hundred thousand dollars; that they assigned to said Lawrence the policies of insurance then on said premises, and have since kept said premises well insured for the benefit of said Lawrence; paid all taxes and
166 assessments levied or imposed upon said premises, and paid all rents and payments reserved in and becoming due & payable by virtue of the lease and agreement referred to in said articles of agreement with said Lawrence, and have kept and performed said articles of agreement in every respect, except as prevented as aforesaid, until all of the said instalments became due; that the payments aforesaid all becoming due, and said Bigelow, Parmelee, & Gage, then composing the firm of F. Parmelee & Co., (your orator having previously sold and transferred his interest therein, and in and to said premises to them as aforesaid,) ascertaining that said Lawrence was wholly unable to convey to them such a title to said premises as was required within the meaning and intent of his covenants aforesaid, ceased to make any further payments on said articles of agreement with him after the payment made by them to and received by said Lawrence on the 3rd day of April, A. D. 1861; that the matter so rested until about the 25th day of July last, when said Lawrence came to Chicago and demanded of said Bigelow, Parmelee, & Gage certain back interest alleged by him to be due
167 upon said articles of agreement; that said Bigelow, Parmelee, & Gage then and there offered to pay said Lawrence all that was legally and justly due him, if he would show himself able and willing to convey to them such a title to said premises as he had agreed to convey, but he, admitting that he was unable to convey such a title, then offered to give said Bigelow, Parmelee, & Gage a quitclaim deed of said premises, and declared he would give no other, and that if they did not take that and pay up said moneys he would eject them from said premises.

And your orator further, in his said answer, denies that he is estopped, by reason of anything contained in the deed from him and said Bigelow, Parmelee, & Gage to said Lawrence, from alleging that said Lawrence is unable to convey to them such a title to said premises, free and clear of all incumbrances, as is specified within the intent and

meaning of his covenant in that behalf; and thereupon avers that the said Lawrence had not at the time the said moneys became due, has not since had, and has not now, any title whatever in or to a portion of
168 said premises, excepting a leasehold interest therein particularly set forth, and insists that the payment of the moneys now remaining due under said articles of agreement, and the conveyance by the said Lawrence as required in and by the same articles are simultaneous acts; and that if said Lawrence cannot and will not convey such title to the same as is required by the true construction, intent, and meaning of said articles of agreement, he is not entitled to have said money, or any part thereof, and the court ought not to decree the said defendants to pay the same, or order the said premises sold for that purpose.

And your orator further, in his said answer, states and submits that if the court shall be of opinion that said Lawrence is not precluded by the matters and things aforesaid from showing and proving that said transactions constituted a loan of money, and the conveyance to, and articles of agreement aforesaid by, said Lawrence to constitute a mortgage security upon said premises; then the said transaction was and is illegal, corrupt, and usurious, as in said answer particularly set
169 forth, whether the same be considered with reference to the laws of the State of Massachusetts or the laws of the State of Illinois; and insists that said transaction is to be governed and construed by the laws of the State of Illinois in force at the time, by which it was in substance provided that the party taking usurious interest forfeited threefold the amount of the whole interest so received by him; but if the court should be of opinion that said transaction was made with reference to, and to be governed by, the laws of Massachusetts, that by the laws of said State, in force at the time, the legal rate of interest was six per cent. per annum, and any person receiving by agreement a higher rate of interest than six per cent. per annum forfeited three-fold the amount of interest thus unlawfully received; that your orator and the said Bigelow, Parmelee, & Gage, from the date of said transaction up to and including a payment made on the 3rd day of April, 1861, actually paid to the said Lawrence, in pursuance to a corrupt and usurious and unlawful agreement made with them and insisted on by the said Law-
170 rence, the sum of twenty-seven thousand dollars, at the several times in said answer particularly set forth, as interest upon and for forbearance of the said sum of fifty thousand dollars in the articles of agreement in said bill set forth and mentioned, the same being for interest upon said sum of fifty thousand dollars from the 1st day of October, A. D. 1856, up to and until April 1st, 1861, and being interest at and after the rate of twelve per cent. per annum upon the said sum of fifty thousand dollars, and insisting that if upon an account taken any sum for principal should be found due to said complainant, (and that anything is due to him your orator in his said answer denies,) the sum so unlawfully and usuriously paid to and received by him, and the amounts forfeited by him in consequence thereof under the laws regulating and controlling the same, ought to and should be applied in payment of the same.

Your orator further, in and by his said answer, insists that nothing is due or owing to the said Lawrence upon or by virtue of the said
171 agreement set forth in said bill of complaint, and that the same ought to be surrendered up by the said Lawrence to be cancelled; that at the time of the sale by your orator to said Bigelow, Parmelee, & Gage, and conveyance to them of all his interest in the said firm of F. Parmelee & Co., and in the said premises in said bill mentioned, the said

Bigelow, Parmelee, & Gage, in consideration thereof, expressly covenanted and agreed to answer and pay all lawful claims and demands then outstanding against said firm; and that if anything should be found due or owing to the said Lawrence on account of the said sum of fifty thousand dollars, the said Lawrence should in justice & equity be required to exhaust the security held by him therefor before being allowed to resort to the personal responsibility of the said parties, or obtaining any personal decree therefor against your orator, as by the said answer of your orator now remaining on file in the office of the clerk of this court, reference being thereto had, will more fully and at large appear, and to which your orator prays he may be at liberty to refer for greater particularity.

And your orator further represents and shows unto your
172 honors that he did not personally attend to or assist in the negotiation between the said Lawrence and said firm of F. Parmelee & Co., out of which the agreement hereinbefore recited arose, but he was informed at the time, and therefore states it to be the fact, that, on or about the said 15th day of September, 1856, the said firm of F. Parmelee & Co., through the said Liberty Bigelow, who was then residing in the State of Massachusetts, made application for a loan of fifty thousand dollars for the purpose of enabling them to complete certain buildings then being erected by them upon the premises in said agreement and hereinbefore described, which were then in the possession of said firm; that said Lawrence refused to make said loan as requested, but consented, upon receiving from your orator and said Bigelow, Parmelee, and Gage a conveyance of said premises hereinafter more particularly described, to pay them therefor the sum of fifty thousand dollars if said F. Parmelee & Co. would agree to complete and
173 finish the buildings then in process of erection thereon, and that he would give back to the said Bigelow, Parmelee, and Gage, and your orator, an agreement to sell and convey to them the said premises free and clear of all incumbrances, upon the payment by them to him of the said sum of fifty thousand dollars and interest thereon, and the performance of certain other conditions imposed by him; that said F. Parmelee & Co. assented to the terms proposed by the said Lawrence, and your orator and the said Bigelow, Parmelee, and Gage, their wives joining with them therein, executed and delivered to the said Lawrence a deed of the said premises bearing date the said 15th day of September, A. D. 1856, and which was afterwards, and on or about the 16th day of October, A. D. 1856, duly filed for record in the recorder's office in and for the said county of Cook and State of Illinois, and was duly recorded in said office in book 123 of deeds at page 128, in and by which deed it was recited in substance that said premises were subject, in said grant, to the rents and conditions provided for and imposed in
174 and by a certain lease made by James Crow & Thomas Crow, parties of the first part, & Theodorus Doty and Daniel Andrews, parties of the second part therein, dated the tenth day of October, 1853, and filed for record in the recorder's office of Cook County aforesaid November 28th, and recorded in book 82, page 682, and also to the payments to be made in and by certain articles of agreement bearing date the first day of August, 1855, between Frederick T. Flagler, of the first part, and Franklin Parmelee, of the second part therein, for the sale by said Flagler to said Parmelee of part of the said premises, and filed for record in said recorder's office on the 19th day of September, 1855, and recorded in book 99 of deeds, page 331, which said lease and articles of agreement, and the moneys thereby required to be paid, were to be

kept, performed, and paid by your orator, said Bigelow, Parmelee, and Gage, parties of the first part in said deed, as by the said deed, or a duly certified copy thereof when produced, reference being thereunto had, will more fully and at large appear. And at the time of the execu-
175 tion and delivery of said deed by your orator, and the said Bigelow, Parmelee, & Gage, to the said Lawrence, the said Lawrence, and your orator and the said Bigelow, Parmelee, and Gage, executed in duplicate the articles of agreement hereinbefore first mentioned, one part of which was delivered by said Lawrence to your orator & said Bigelow, Parmelee, and Gage, and the other returned by him. And at the same time, and as a part of the same transaction, and at the express instruction of the said Lawrence, your orator and the said Bigelow, Parmelee, and Gage executed and delivered to the said Lawrence their certain bond or writing obligatory, under their hands and seals, in the penal sum of three thousand dollars, and bearing date the said 15th day of September, A. D. 1856; to which said bond or writing obligatory there was a condition underwritten to the effect that, if your orator and the said Bigelow, Parmelee, and Gage should, on the first day of October, 1857, deliver at the Tremont Bank, Boston, their notes payable in six and twelve months, at said bank, for such sum as the interest at two per centum should amount on all the moneys remaining un-
176 paid on said first day of October upon certain articles of agreement, bearing even date therewith, made by said Lawrence with your orator and the said Bigelow, Parmelee, and Gage, for the conveyance of certain real estate by said Lawrence to your orator and said Bigelow, Parmelee, and Gage, as therein described, (meaning the agreement above referred to,) and should, on the first day of October in each year after 1857, deliver also at said bank the notes of your orator and said Bigelow, Parmelee, & Gage, or the surviver or survivors of them, for the interest at two per centum on such sum as should remain unpaid on said articles, until the whole sum of fifty thousand dollars mentioned in said articles should be paid, and should make said notes payable at said bank to said Lawrence in six and twelve months from the time of so making the same, and should pay, or cause to be paid, all such notes so given, then such obligation to be void; otherwise to be in full force and effect, as by the said bond or writing obligatory, reference being thereunto had, will more fully appear.

177 And your orator, admitting the execution and delivery of the said deed, articles of agreement, and bond, as above set forth, expressly charges and insists that they were and are all the papers, to the knowledge of your orator, having relation to the said transaction between your orator and the said Bigelow, Parmelee, & Gage and the said Lawrence; and upon information and belief he further states & insists that the form of the said transaction was dictated by the said Lawrence, and that the said deed, articles of agreement, & bond were all prepared either by him or under his express direction and authority, and were fully understood by him at the time of the execution thereof, and were moreover the embodiment of the whole understanding and agreement between him and the said Bigelow, Parmelee, Gage, and your orator; that he was not in any manner deceived or misled in any matter relating thereto, or to the effect thereof, nor was there any accident or mistake therein on the part of the said Lawrence. Your orator, therefore, insists that said Lawrence ought to be compelled to carry out the said agreement, and to perform his covenants
178 therein contained, according to the true intent and meaning thereof; and the whole of the sum of fifty thousand dollars which,

by the terms of said articles of agreement, your orator and the said Bigelow, Parmelee, & Gage were to pay the said Lawrence for the said premises, free and clear of all incumbrances, being, according to the terms of said articles of agreement, now due, and the said Bigelow, Parmelee, & Gage having in all respects complied with and kept their covenants in said articles of agreement contained, except as prevented from so doing by the said Lawrence, as hereinafter stated, up to the time when the whole of the said purchase-money became due, the said Lawrence ought not to be permitted to recover the said purchase-money from your orator and the said Bigelow, Parmelee, and Gage, or any or either of them, until he is also ready and willing to make conveyance of the said premises, according to the terms and provisions of said articles of agreement, to them, or such of them as are entitled to receive the same.

And your orator expressly charges, upon information and be-
179 lief, that said Bigelow, Parmelee, and Gage, (your orator having previously sold and conveyed to them all his interest as above stated,) were on the first day of October, A. D. 1861, when the last instalment of said purchase-money became due, according to said articles of agreement, able, ready, and willing to make payment of the entire purchase-money and interest then unpaid thereon, according to the terms of said articles of agreement, upon receiving from said Lawrence a good and sufficient deed, conveying and assuring to them the said premises, free and clear of all incumbrances, such as the said Lawrence, in and by the said articles of agreement, consented to give.

Your orator further represents and shows unto your honors that the said Lawrence gives out and pretends, as in his bill of complaint above recited is set forth, that the said transaction between him and your orator and said Bigelow, Parmelee, and Gage was simply a loan of fifty thousand dollars, and that the said deed and articles of agreement aforesaid constituted a mortgage security upon the premises therein described for the same. And your orator, expressly denying the
180 claims and pretenses of the said Lawrence in that behalf, and insisting that he is estopped by his covenants aforesaid, as well as by his deliberate choice and direction in respect to the form and substance of said transaction as above set forth, further represents and charges that in case the said transaction shall be construed to be a loan of money, and that the said Lawrence is not estopped from asserting and proving the same to be such, then, as such loan, the said transaction was a corrupt and unlawful agreement between said Lawrence and your orator and the said Bigelow, Parmelee, and Gage, fraudulently, corruptly, unlawfully, and intentionally devised, arranged, and contrived by the said Lawrence for the purpose of securing to him a large amount of unlawful and usurious interest upon the said sum of money so loaned by him to your orator and the said Bigelow, Parmelee, & Gage, to wit, interest at and after the rate of twelve per centum per annum, payable semi-annually at the Tremont Bank, in Boston, upon the princi-
181 pal sum of fifty thousand dollars, payable in installments, as provided in said articles of agreement, at the office of F. Parmelee & Co., in Chicago, and that the said bond or writing obligatory given by your orator and the said Bigelow, Parmelee, & Gage to the said Lawrence was designed and intended to secure to said Lawrence an additional two per centum per annum upon the said principal sum of fifty thousand dollars over and above the ten per centum per annum named and provided to be paid in and by the said articles of agreement.

And your orator further represents, charges, and insists that the

said transaction was consummated, and all the papers relating thereto perfected and delivered in the city of Chicago, in the State of Illinois, where the premises refered to therein were and are situated, and that the same was made with reference to, and is to be interpreted and governed by, the laws of said State of Illinois, in force at that time; and that by a law of this State, in force at that time, an agreement for the payment of interest or money loaned at and after a higher rate than ten per
182 centum per annum was unlawful and usurious, and subjected the person or corporation receiving the same to a forfeiture of three times the whole interest so received by him or it, under and in pursuance of such unlawful and usurious agreement.

And your orator further expressly states and charges that, in pursuance of the said articles of agreement aforesaid between said Lawrence and your orator and the said Bigelow, Parmelee, & Gage, and the bond aforesaid demanded and received by the said Lawrence from your orator and the said Bigelow, Parmelee, and Gage, your orator and the said Parmelee and Gage paid to the said Lawrence, and the said Lawrence accepted and received from them, on or about the 26th day of March, A. D. 1857, as and for interest upon the said sum of fifty thousand dollars in the said articles of agreement mentioned, from the 1st day of October, 1856, up to the first day of April, 1857, the sum of three thousand dollars; and on or about the 24th day of September, 1857, the sum of three thousand dollars as and for interest upon the same
183 sum of money, from the first day of April, 1857, up to and until the 1st day of October, 1857; and on or about the 27th day of March, 1858, the further sum of three thousand dollars as and for the interest on said sum of fifty thousand dollars from the 1st day of October, 1857, up to the first day of April, 1858; and on or about the 28th day of September, 1858, the further sum of three thousand dollars as and for interest on the same principal sum from the 1st day of April, 1858, up to October 1st, 1858; and that said Bigelow, Parmelee, and Gage, on or about the 28th day of March, A. D. 1859, paid to the said Lawrence the further sum of three thousand dollars as and for the interest upon said sum of fifty thousand dollars from the 1st day of October, 1858, up to the first day of April, 1859; and on the 26th day of September, 1859, paid to said Lawrence the further sum of three thousand dollars as and for interest on said sum of fifty thousand dollars from the 1st day of April, 1859, up to the 1st day of October, 1859; and on or about the 2nd day of April, 1860, the further sum of three thousand dollars as and for the interest upon said principal sum afore-
184 said from the 1st day of October, 1859, up to the 1st day of April, 1860; and on or about the 27th day of September, 1860, the further sum of three thousand dollars as and for the interest on said principal sum from the 1st day of April, 1860, up to the 1st day of October, 1860; and on or about the 29th day of March, 1860, the further sum of three thousand dollars as and for the interest upon the said sum of fifty thousand dollars aforesaid from the 1st day of October, 1860, up to the 1st day of April, 1861, together amounting to the sum of twenty-seven thousand dollars paid to, and received by, the said Lawrence as and for the interest on the said principal sum of fifty thousand dollars in the said articles of agreement aforesaid mentioned, from the 1st day of October, 1856, up to and until the 1st day of April, 1861, in pursuance of the unlawful, corrupt, and usurious agreement and assignment aforesaid being interest on the said sum of fifty thousand dollars paid to and received by him, semi-annually, at and after the rate of twelve per per centum per annum.

185 And your orator further represents and claims, if the transaction aforesaid between the said Lawrence and your orator and the said Bigelow, Parmelee, and Gage shall be construed to be a loan of money by the said Lawrence to said F. Parmelee & Co., and that the papers aforesaid, embodying the same, constitute a mortgage security only upon said premises therein described, that then, by reason of the unlawful and corrupt usurious agreement aforesaid, and the unlawful and usurious interest reserved therein by said Lawrence actually paid to and received by him as aforesaid, under and in pursuance of said unlawful, corrupt, and usurious agreement, the said Lawrence has incurred the penalty in such case provided in and by the laws of this State in force at the time of the making of said agreement, to wit, the forfeiture of three times the amount of the whole interest so reserved by and paid to and received by him; that is to say, three times the said sum of twenty-seven thousand dollars so paid to and accepted by him as above set forth, being the sum of eighty-one thousand dollars. And your
186 orator prays and insists that the provisions of said laws in that behalf may be strictly enforced against the said Lawrence, at least to the extent of the full amount of the principal and interest which shall be found due to the said Lawrance (if anything shall be so found to be due) upon the said loan.

Your orator further represents and shows unto your honors that, at the time of the sale by him of all his right, title, and interest in and to the property, business, rights, and effects of the said firm of F. Parmelee & Co., and in and to the premises hereinbefore described to said Liberty Bigelow, Franklin Parmelee, and David A. Gage, as hereinbefore set forth, they, the said Bigelow, Parmelee, and Gage, in consideration of the sale to them as aforesaid, expressly covenanted and agreed to and with your orator to assume, pay, and discharge all the lawful claims and demands, obligations and liabilities, of said firm then existing, and to save and keep harmless your orator in respect to the same; that the claim of the said Lawrence, whatever the same may be adjudged to be, existed against said firm before and at the time
187 of said sale by your orator, and is included in and covered by the covenants and agreements of the said Bigelow, Parmelee, and Gage to your orator aforesaid; that, in case the claims of the said Lawrence shall be sustained by the court in any respect, and any sum of money shall by the court be found to be due and owing to him, then said Lawrence has as security, not only the personal responsibility of the said Bigelow, Parmelee, and Gage, and your orator, but also the further security of the premises and property hereinbefore described, or such interest therein as was vested in him, by the said deed aforesaid, from your orator and the said Bigelow, Parmelee, & Gage, whilst your orator has only the personal responsibility of said Bigelow, Parmelee, & Gage, under and by virtue of their covenant and agreement aforesaid, to indemnify him, against the payment of any such sum, or any part thereof, in case he shall be compelled to pay the same.

And your orator therefore insists that the said Lawrence should be first compelled to the security held by him upon the said premises for the payment of any sum (if any there should be) found to be due
188 and owing to him upon the claims urged by him in his bill of complaint aforesaid; and that in justice and equity he should be compelled, after exhausting said specific security, to exhaust also the personal responsibility of the said Bigelow, Parmelee, and Gage, before to any forcible proceedings against your orator.

And your orator well hoped that the said Lawrence would have com-

plied with the reasonable offers and requests of the said Bigelow, Parmelee, and Gage, and that he would have performed his covenants and agreements in the articles of agreement hereinbefore set forth contained, and would have procured for, and conveyed to said Bigelow, Parmelee, and Gage, the premises therein described, upon receiving from them the sum of money therein specified and interest thereon, in such manner as by the terms of said articles of agreement and his covenant therein he bound himself to do, or that he would have in some manner arranged said matters with said Bigelow, Parmelee, and Gage amicably and without annoyance to your orator, as in justice and equity he
189 ought to have done.

But now so it is, may it please your honors, that the said Lawrence, combining and confederating with divers persons to your orator unknown, but whose names, when discovered, your orator prays he may be at liberty to insert herein with proper and apt words to charge them as parties defendant hereto, and contriving to injure and oppress your orator in the premises, utterly refuses to comply with the reasonable offers and requests of the said Bigelow, Parmelee, & Gage aforesaid, or to make the said conveyance of said premises, according to the true intent and meaning of the said articles of agreement and his covenants in that behalf, or to make any just and fair settlement with them in respect of said matters; and for his so doing, he assigns a great number of unfounded pretenses, particularly as set forth in his said bill of complaint above mentioned; all which actings, doings, and pretenses of the said Lawrence are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

190 In tender consideration whereof, and forasmuch as your orator is remediless by the strict rules of the common law, and can only have relief in this court, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said defendants, Daniel Lawrence, Liberty Bigelow, Franklin Parmelee, and David A. Gage, and their confederates, when discovered, may true, direct, and perfect answers make (but without oath, their answers under oath being hereby expressly waived, according to the form of the statute in such case made and provided) to all and singular the charges, allegations, and statements herein contained; and that as fully and particularly as though the same were here again repeated, and they thereunto specially interrogated; and that upon the hearing of this cause, the said defendant Lawrence may be decreed to perform, fulfil, and keep his covenants and agreements in the articles of agreement between him and your orator, and said Bigelow, Parmelee, and Gage hereinbefore first mentioned contained, according to the strict letter, tenor, and effect, true intent and meaning, of
191 the said articles of agreement; and in the event that he shall be found unable so to do, and until he is able, ready, and willing, and offers so to do, that he may be enjoined and prevented by the order and decree of this honorable court, from collecting, receiving, or in any way or manner enforcing, or attempting to enforce, payment of the said sum of money, or any part thereof, either principal or interest, in said agreement named; or in case the court shall be of opinion that the transaction between said Lawrence and your orator, and said Bigelow, Parmelee, and Gage, hereinbefore set forth, constituted a loan of money by said Lawrence to said firm of Parmelee & Co., and that the papers relating thereto constituted only a mortgage security for the payment of the money so loaned upon the premises therein described, and that said Lawrence is not estopped and precluded from showing the same, then

your orator prays that the said transaction, and the agreements and contracts of the parties relating thereto, may be adjudged unlawful and usurious under the laws of this State in force at the time of making
192 the same, and that the said laws may be enforced in respect to the same, and that an account may be taken of the amount due said Lawrence upon the said agreements, and the amount paid to and received by him in pursuance thereof; and in case the forfeiture incurred by him in consequence of the said unlawful and usurious agreements, and the moneys received by him under the same, shall be found to exceed the amount due him upon said agreements, that then he be ordered, directed, and decreed to surrender up the said usurious and unlawful agreement to be cancelled, and a decree be entered herein declaring the same absolutely at an end; and that said Lawrence be ordered and decreed to convey and release to the said Bigelow, Parmelee, and Gage, or the person or persons adjudged to be entitled thereto, all the right, title, and interest acquired by him under and by virtue of the deed of the 15th day of September, 1856, executed and delivered to him by your orator and the said Bigelow, Parmelee, and Gage, and their wives, and all
193 interest now held by him therein; and in case the amount found to be due him upon said agreements shall exceed the said forfeiture, that then he be decreed to resort for the payment thereof first to the securities held by him in mortgage, and to the personal responsibility of the said Bigelow, Parmelee, & Gage, before proceeding personally against your orator; and that your orator's rights and interests in the premises, by virtue of the covenants and agreements hereinbefore mentioned of the said Bigelow, Parmelee, and Gage, may be fully protected and enforced; and that your orator may have such other and further or different relief as the nature of the case may require and to your honors shall seem meet:

May it please your honors to grant unto your orator the writ of summons of the people of the State of Illinois, issuing out of and under the seal of this honorable court, and directed to the said defendants, Daniel Lawrence, Liberty Bigelow, Franklin Parmelee, and David A. Gage, and commanding them, and each of them, by a certain day to be
194 therein named, personally to be and appear before your honors, in this honorable court, then and there to answer all and singular the premises, and to stand to, abide by, and perform all such orders and decrees in the premises as your honors shall make therein.

And your orators will ever pray, &c.

WALTER S. JOHNSON,
GOODRICH, FARWELL & SMITH,
Sol'r for Complainant.

And afterwards, to wit, on the same day and year last aforesaid, came Liberty Bigelow, David A. Gage, and Franklin Parmelee, and filed in the office of the clerk of said court their certain answer to the leasebill of Daniel Lawrence; which said answer is in the words and figures following, to wit:

195 In chancery, before the supirior court of Chicago.

The joint and several answers of David A. Gage, Franklin Parmelee, and Liberty Bigelow, three of the defendants, to the bill of complaint of Daniel Lawrence, complainant, against Walter A. Johnson, Electa M. Johnson, Harriet A. Bigelow, Eliza M. Gage, Adaline Parmelee, David A. Gage, Franklin Parmelee, and Liberty Bigelow.

These defendants, now and at all times hereafter saving and reserv-

ing to themselves all manner and benefit of advantage of exception to the many errors and insufficiencies in said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as the defendants are advised is material for them to make answer unto, they answer and say that, at the time of the transactions between these defendants and said complainants hereinafter stated, and on or about the 15th of September, A. D. 1856, both the said complainant and the
196 said defendant Liberty Bigelow were and still are citizens of the Commonwealth of Massachusetts; that the said David A. Gage and Franklin Parmelee were and still are citizens of the State of Illinois; that the said Walter S. Johnson then was also a citizen of the State of Illinois, but has since become a citizen of the State of Wisconsin; that these defendants and the said Johnson were at that time in the business of running lines of omnibuses in the city of Chicago, under the firm name and style of F. Parmelee & Co., but that afterwards, and on or about the third day of November, 1858, said Johnson sold out all of his interest in said firm, and ceased to be a member thereof.

The defendants, further answering, say that they admit that the said firm, through the said Liberty Bigelow, did, on or about the said 15th day of September, 1856, at said Medford, in Massachusetts aforesaid, make an application to the said complainant to lend and advance to the said firm of F. Parmelee & Co. the sum of fifty thousand dollars,
197 but they further say that the entire transaction, in reference to said application, was, when consummated, and without any fraud or circumvention on the part of the said firm of F. Parmelee & Co., or any member thereof, and without any accident or mistake on the part of said complainant in regard to the same, or any part thereof, reduced to writing, under the hands and seals of the respective parties thereto, deliberately and understandingly executed and delivered. Wherefore these defendants deny that there was any such verbal agreement or understanding respecting the said sum of money, or any other sum of money, or any security therefor, as is alleged in said bill of complaint, and they insist that the said complainant is, by the rules and practice of courts of equity, estopped and precluded by means of his covenants and deeds respecting said transaction, and more particularly set forth or referred to hereafter, from setting up, alleging, or proving any such verbal agreement or understanding in reference to any of said matters or things covered by and included in the said articles of agree-
198 ment referred to in and annexed to the said bill of complaint; and that the said complainant is also estopped and precluded from alleging or proving that the said transaction, manifested by the said articles of agreement and deed referred to in the said bill of complaint, and copies of which are thereto annexed, constitute, as to said complainants, a loan of money or mortgage security therefor, either at law or in equity. Wherefore the defendants say that they deny that the said complainant has or holds any indebtedness against these defendants, secured by any mortgage upon the said premises, or any part thereof, in said bill mentioned, in manner and form as is pretended in said bill of complaint; and they deny that they borrowed any money of the said complainant under any such verbal promise, arrangement, or agreement as is pretended and set forth in the said bill of complaint; and these defendants deny that there was any agreement between them and the said complainant respecting a mortgage security upon said premises, any
199 right of redemption, or making of any defeasance of the said deed in manner or form as is alleged and pretended in and by the said bill of complaint, and they aver that the said deed and articles of agree-

ment, together with a certain writing obligatory hereinafter more particularly set out, constitute all the writings made or entered into at the time of the said transaction between the said firm of F. Parmelee & Co. and the said complainant; and they deny that there was any verbal parol agreement made between the said parties at the time aforesaid, or at any subsequent time, to the effect that said F. Parmelee & Co. should execute or the said complainant receive any mortgage on said premises; and, on the contrary thereof, the said complainant, at the time of the making said application to him for the loan by him to said F. Parmelee & Co. of fifty thousand dollars, and during all the negotiations in that behalf, expressly refused to take any mortgage or aught in the nature of any mortgage on said premises, by way of security for said
200 money, and insisted on having the said transaction, in all respects, an absolute conveyance by said F. Parmelee & Co. to him of all their interest in said premises, subject to said lease from James and Thomas Crow to Theodore Doty and Daniel Andrews, (in said bill mentioned,) and that he would pay said F. Parmelee & Co. fifty thousand dollars for the same, and give them back articles of agreement to sell the said premises to them upon certain terms. And these defendants further say that they verily believe, and therefore charge the fact to be, that the said complainant required the said transaction to be put into the form into which it was put for one purpose, amongst others, to conceal an unlawful and corrupt violation of the laws against usury in force both in the said Commonwealth of Massachusetts and in the State of Illinois, and to evade the consequences thereof, as hereinafter more particularly stated and set forth. Wherefore this court ought not to lend its aid to the said complainant to grant him the relief prayed for in said bill of complaint, or especially to relieve him from the perform-
201 ance of his covenants requiring him to convey to these defendants and said Johnson such title to the said premises, free and clear of all incumbrances, as is specified in and within the intent and meaning of said articles of agreement, made and entered into in the manner and under the circumstances as herein set forth and alleged. And these defendants, further answering, say that, in and by the said articles of agreement between the said complainant and themselves and said Johnson, bearing date the day and year aforesaid, the said complainant did not covenant or agree to resell or reconvey the same title to the said premises as was conveyed to him in and by the said deed from these defendants and said Johnson in said bill mentioned, but the said complainant covenanted and agreed to and with these defendants and said Johnson that, upon the said last-named parties paying to him the sum of fifty thousand dollars, and interest thereon as thereinafter stated, to sell and, by a good and sufficient deed, to convey and assure to the said parties, free and clear of all incumbrances, all
202 those pieces and parcels of land, and the buildings thereon and appurtenances thereto belonging, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit: Lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen, (13;) and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, comencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty feet to the place of beginning; as by the said articles of agreement will

more fully and at large appear, and which are the same premises in said bill of complaint mentioned.

And these defendants further say that the said sum of fifty thousand dollars, payable by instalments as in said articles of agreement specified, was made specially payable in and by said articles at the
203 office of F. Parmelee & Co., in Chicago; and although the said F. Parmelee & Co. were ready and willing with the money at their said office to pay the said several instalments as the same respectively became due as aforesaid, yet the said complainant, not wanting the same or any or either of them paid as they respectively became due, waived the payment of each and every thereof, and failed and neglected to be present at the said office to receive the said instalments, or any or either of them, either in person or by any agent not only, but notified the F. Parmelee & Co., from time to time, as said respective instalments came due, that he, the said complainant, did not want said money, being principal, or any part thereof, and thereby prevented the said F. Parmelee & Co., who were then and there ready and willing to pay the same, from paying said fifty thousand dollars as aforesaid, at the time the same was payable in & by the said articles of agreement.

But the said F. Parmelee & Co. have, in fact, paid to the said complainant, upon said articles of agreement at different times, from
204 the making thereof and down to April 3, 1861, and in different sums, amounting in all to the sum of twenty-seven thousand dollars; have erected and completed upon the said premises the building mentioned in said articles of agreement, at a cost and expense to them of upwards of one hundred thousand dollars; that within a reasonable time after the making of said articles of agreement, they assigned over to the complainant all such policies of insurance upon said buildings as they had procured, and have at all times since kept said buildings well and sufficiently insured for the use and benefit of said complainant; have paid all taxes and assessments levied or assessed upon said premises, and all of the rent or rents payable by virtue of the said lease, bearing date the 10th day of October, A. D. 1853, made by James Crow and Thomas Crow to Theodorus Doty and Daniel Andrews, during and since the said period for paying said sum of fifty thousand dollars, and a copy of which said lease, duly certified, is hereto annexed, marked Exhibit "F," and is made a part of this answer; and the said
205 F. Parmelee & Co. have made all payments which have accrued since the making of said articles of agreement, under and by virtue of certain articles of agreement, bearing date the first day of August, A. D. 1855, between Frederick T. Flagler and Franklin Parmelee, mentioned in said first-named articles of agreement, and kept the said articles of agreement and fully performed the same in every particular, to be performed and kept on the part of said F. Parmelee & Co., except as prevented as aforesaid, until all of said instalments became due; that the payments aforesaid becoming all due, and these defendants ascertaining that the said complainant was wholly unable to convey to them such a title to the said premises as was required, within the intent and meaning of his covenants as aforesaid, ceased to make any further payments on said articles of agreement with him after the payment made by them and received by the complainant on the said 3rd day of April, A. D. 1861; that from the said last-mentioned time the said matters rested in silence until on or about the
206 twenty-fifth day of July last past, when the said complainant came to Chicago aforesaid, and demanded of these defendants all of the back interest that he alleged to be due him upon said articles

of agreement, expressly stating that he did not want any of the principal, or only a small part if any. Whereupon these defendants, being ready and willing to pay to said complainant all that was legally and justly due to him upon said articles of agreement, if the said complainant would perform the same on his part, then and there offered and proposed to said complainant to pay him all that was legally and justly due him in this behalf if he, the complainant, would show himself able and willing to convey to them such title to said premises as he had agreed to convey; but the said complainant then and there admitting and confessing that he was unable to convey such a title to said premises as aforesaid, then and there offered to give said defendants a quitclaim deed of said premises, and declared that he should give no other, and that if these defendants did not take that & pay up
207 said moneys he would proceed at once to eject them from the said premises.

And these defendants, further answering, say that they are advised, verily believe, and therefore insist that they are not in any manner estopped, by reason of anything in the said deed from them and said Johnson to said complainant, from alleging that the said complainant is unable to convey to them such a title to said premises, free and clear of all incumbrances, as is specified and within the intent and meaning of his said covenant with them in that behalf, because they say that the said grant and conveyance in and by the said deed is thereby made expressly subject to the rents and conditions provided for and imposed in and by the said lease from said James & Thomas Crow to the said Theodorus Doty and Daniel Andrews, and which had by the said Doty and Andrews been duly assigned and transferred and acquired by said F. Parmelee & Co. prior to the time of the making of said deed, and the said F. Parmelee & Co. were in possession of said lots number fifteen and sixteen, and said north eight feet of said lot number
208 fourteen, in said block thirteen, under the said assignment of said lease, and under no other right at the time of making said deed, and which said last-mentioned lots and premises constitute much the largest portion of the premises described in said bill of complaint, viz, about one hundred and eight feet fronting on said State street, in the city of Chicago, and upon which, together with said twenty feet described in the said Flagler contract, was erected the said buildings now known as Garrett Block; that in said deed from these defendants and said Johnson to the complainant, as aforesaid, and antecedently to any of the express covenants therein contained, the said conveyance is qualified by the provision in substance and effect following, to wit:

"The said above-described property being subject in this grant to the rents and conditions provided for and imposed in and by a certain lease made by James and Thomas Crow, parties of the first part, & Theodorus Doty and Daniel Andrews, parties of the second part therein,
209 and bearing date the tenth day of October, eighteen hundred and fifty-three, and filed for record in the recorder's office of the county of Cook aforesaid, November twenty-eighth, and recorded in book 82, page 682, and also to the payments to be made in and by certain articles of agreement bearing date the first day of August, eighteen hundred and fifty-three, between Frederick T. Flagler, of the first part, and Franklin Parmelee, of the second part therein, for the sale by said Flagler to said Parmelee of part of the above-described premises, and filed for record in the office of said recorder on the 19th day of September, eighteen hundred and fifty-five, and recorded in book of deeds ninety-nine, page three hundred and thirty-one, which said lease and

more fully and at large appear, and which are the same premises in said bill of complaint mentioned.

And these defendants further say that the said sum of fifty thousand dollars, payable by instalments as in said articles of agreement specified, was made specially payable in and by said articles at the
203 office of F. Parmelee & Co., in Chicago; and although the said F. Parmelee & Co. were ready and willing with the money at their said office to pay the said several instalments as the same respectively became due as aforesaid, yet the said complainant, not wanting the same or any or either of them paid as they respectively became due, waived the payment of each and every thereof, and failed and neglected to be present at the said office to receive the said instalments, or any or either of them, either in person or by any agent not only, but notified the F. Parmelee & Co., from time to time, as said respective instalments came due, that he, the said complainant, did not want said money, being principal, or any part thereof, and thereby prevented the said F. Parmelee & Co., who were then and there ready and willing to pay the same, from paying said fifty thousand dollars as aforesaid, at the time the same was payable in & by the said articles of agreement.

But the said F. Parmelee & Co. have, in fact, paid to the said complainant, upon said articles of agreement at different times, from
204 the making thereof and down to April 3, 1861, and in different sums, amounting in all to the sum of twenty-seven thousand dollars; have erected and completed upon the said premises the building mentioned in said articles of agreement, at a cost and expense to them of upwards of one hundred thousand dollars; that within a reasonable time after the making of said articles of agreement, they assigned over to the complainant all such policies of insurance upon said buildings as they had procured, and have at all times since kept said buildings well and sufficiently insured for the use and benefit of said complainant; have paid all taxes and assessments levied or assessed upon said premises, and all of the rent or rents payable by virtue of the said lease, bearing date the 10th day of October, A. D. 1853, made by James Crow and Thomas Crow to Theodorus Doty and Daniel Andrews, during and since the said period for paying said sum of fifty thousand dollars, and a copy of which said lease, duly certified, is hereto annexed, marked Exhibit "F," and is made a part of this answer; and the said
205 F. Parmelee & Co. have made all payments which have accrued since the making of said articles of agreement, under and by virtue of certain articles of agreement, bearing date the first day of August, A. D. 1855, between Frederick T. Flagler and Franklin Parmelee, mentioned in said first-named articles of agreement, and kept the said articles of agreement and fully performed the same in every particular, to be performed and kept on the part of said F. Parmelee & Co., except as prevented as aforesaid, until all of said instalments became due; that the payments aforesaid becoming all due, and these defendants ascertaining that the said complainant was wholly unable to convey to them such a title to the said premises as was required, within the intent and meaning of his covenants as aforesaid, ceased to make any further payments on said articles of agreement with him after the payment made by them and received by the complainant on the said 3rd day of April, A. D. 1861; that from the said last-mentioned time the said matters rested in silence until on or about the
206 twenty-fifth day of July last past, when the said complainant came to Chicago aforesaid, and demanded of these defendants all of the back interest that he alleged to be due him upon said articles

of agreement, expressly stating that he did not want any of the principal, or only a small part if any. Whereupon these defendants, being ready and willing to pay to said complainant all that was legally and justly due to him upon said articles of agreement, if the said complainant would perform the same on his part, then and there offered and proposed to said complainant to pay him all that was legally and justly due him in this behalf if he, the complainant, would show himself able and willing to convey to them such title to said premises as he had agreed to convey; but the said complainant then and there admitting and confessing that he was unable to convey such a title to said premises as aforesaid, then and there offered to give said defendants a quitclaim deed of said premises, and declared that he should give no other, and that if these defendants did not take that & pay up
207 said moneys he would proceed at once to eject them from the said premises.

And these defendants, further answering, say that they are advised, verily believe, and therefore insist that they are not in any manner estopped, by reason of anything in the said deed from them and said Johnson to said complainant, from alleging that the said complainant is unable to convey to them such a title to said premises, free and clear of all incumbrances, as is specified and within the intent and meaning of his said covenant with them in that behalf, because they say that the said grant and conveyance in and by the said deed is thereby made expressly subject to the rents and conditions provided for and imposed in and by the said lease from said James & Thomas Crow to the said Theodorus Doty and Daniel Andrews, and which had by the said Doty and Andrews been duly assigned and transferred and acquired by said F. Parmelee & Co. prior to the time of the making of said deed, and the said F. Parmelee & Co. were in possession of said lots number fifteen and sixteen, and said north eight feet of said lot number
208 fourteen, in said block thirteen, under the said assignment of said lease, and under no other right at the time of making said deed, and which said last-mentioned lots and premises constitute much the largest portion of the premises described in said bill of complaint, viz, about one hundred and eight feet fronting on said State street, in the city of Chicago, and upon which, together with said twenty feet described in the said Flagler contract, was erected the said buildings now known as Garrett Block; that in said deed from these defendants and said Johnson to the complainant, as aforesaid, and antecedently to any of the express covenants therein contained, the said conveyance is qualified by the provision in substance and effect following, to wit:

"The said above-described property being subject in this grant to the rents and conditions provided for and imposed in and by a certain lease made by James and Thomas Crow, parties of the first part, & Theodorus Doty and Daniel Andrews, parties of the second part therein,
209 and bearing date the tenth day of October, eighteen hundred and fifty-three, and filed for record in the recorder's office of the county of Cook aforesaid, November twenty-eighth, and recorded in book 82, page 682, and also to the payments to be made in and by certain articles of agreement bearing date the first day of August, eighteen hundred and fifty-three, between Frederick T. Flagler, of the first part, and Franklin Parmelee, of the second part therein, for the sale by said Flagler to said Parmelee of part of the above-described premises, and filed for record in the office of said recorder on the 19th day of September, eighteen hundred and fifty-five, and recorded in book of deeds ninety-nine, page three hundred and thirty-one, which said lease and

articles of agreement, and the money thereby required to be paid, are to be kept, performed, and paid by the said Liberty Bigelow, Walter J. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, or their heirs and administrators."

And these defendants further say that they are advised, verily
210 believe, and therefore insist that all the covenants and provisions contained in their said deed ought to be construed with reference to the rights and obligations arising upon said lease, so far as pertains to the said lessees therein named, as by the said deed or certified copy thereof will, when produced, more fully and at large appear; that in and by the said lease the said lessees covenanted to and with the said James and Thomas Crow, the lessors therein named, that at the expiration of the time in said lease mentioned they would yield up the said demised premises to the said lessors in as good condition as when the same were entered upon by said lessees, loss by fire, inevitable accident, or ordinary wear excepted; and further, that, if the said term in said lease should be ended at the election of said lessors, their heirs, executors, administrator, or assigns, as in said lease provided, or in any other way, the said lessees, their executors, administrators, and assigns, covenanted and agreed to surrender and deliver up said premises and property peacably to said lessors, their executors, administrators, and
211 assigns, immediately upon the determination of said term as aforesaid, and if they should remain in the possession of the same ten days after the notice of such default, or after the determination of said lease in any of the ways therein named, they, the said lessees, should be deemed guilty of a forcible detainer of said premises under the statute, and be subject to all of the conditions and provisions above (therein) named, and to eviction and removal forcibly or otherwise, as by the said lease when produced, or said certified copy thereof, will more fully and at large apear.

And these defendants further say that the said term in said lease expires by lapse of time on the first day of May, A. D. 1874; that, by reason of the said grant by these defendants and said Johnson being made subject to all the terms and conditions of said lease imposed upon the lessees therein named, and these defendants and said Johnson being expressly obligated by said deed to perform and comply with the same, and all of the covenants in said deed being subject to the rights
212 of said James & Thomas Crow, their heirs, or assigns, and the recognition of title to said premises described in said lease in the said lessors, these defendants are advised, verily believe, and therefore insist that they are not estopped, by anything contained in said deed, from alleging that the said complainant is unable, from want of title in himself to the said premises, to comply with said covenant to sell and convey said premises. And these defendants aver that the said complainant had not at the time the said moneys became due and payable in and by said articles between him, these defendants, and said Johnson, as aforesaid, at no time since, nor has he now, any title whatever in or to the said premises described in said lease and parcel of the same premises mentioned in the said bill of complaint, except the tenure and leasehold interest created in and by the said lease and transferred to said complainant by the said deed from these defendants and the said Johnson to the said complainant, as aforesaid.

And these defendants further say that, as they are advised and
213 believe, the paying of the moneys which may remain due under and by virtue of the said articles of agreement between said complainant and these defendants and said Johnson aforesaid, and the con-

veyance by the said complainant required in and by the same articles of said premises, are simultaneous acts; and that if the said complainant cannot and will not convey to these defendants such title to the same as is required by the true construction, intent, and meaning of said articles of agreement, he, the said complainant, is not entitled to have said moneys, or any part thereof, and this court ought not to decree these defendants to pay the same, or order the said premises sold for making the said moneys, or any part thereof.

And these defendants, further answering, say that if this court shall be of opinion that the said complainant is not precluded by the several matters and things aforesaid from showing and proving that the said transactions constituted a loan of money, and if the court shall be of the opinion that the said conveyance by these defendants and
214 said Johnson to the said complainant aforesaid, the entering into the said articles of agreement as aforesaid, constitute a mortgage security upon the said premises as is alleged and claimed in and by the said bill of complaint, and the complainant is not precluded from having the relief prayed for in said bill of complaint, then these defendants claim and insist that the said transaction was and is illegal, corrupt, and usurious as hereinafter next stated and set forth.

And these defendants state and show to this court that, before and at the time of the entering into of the said transactions or any of them, there was a statute in force in the said Commonwealth of Massachusetts, entitled "An act concerning usury," as follows, that is to say:

"*Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, as follows:*

"SECTION 1. Whenever in any action brought on any contract or assurance for the payment of money, hereafter made, it shall ap-
215 pear that a greater rate of interest has been directly or indirectly reserved, taken, or received than is allowed by law, the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the interest unlawfully reserved and taken, and no more.

"SECTION 2. Whenever a greater rate of interest than is allowed by law shall hereafter be paid, the party paying the same may recover back three-fold the amount of the unlawful interest so paid, and no more.

"SECTION 3. So much of the second and third sections of the thirty-fifth chapter of the revised statutes as is inconsistant with this act is hereby repealed."

As by a certified copy of the said statute hereto annexed, marked Exhibit "G," and made a part of this answer, will more fully and at large appear.

And these defendants further say that by the first section of said thirty-fifth chapter of the revised statutes of said Commonwealth
216 of Massachusetts, in force before and at the time of the entering into by said parties of any or either of the transactions hereinafter stated, and still in force, it was enacted as follows:

"SECTION 1. The interest of money shall continue to be at the rate of six dollars, and no more, upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time."

As by a copy of said act, when produced, will appear.

And these defendants, further answering, say that prior to the 31st day of January, A. D. 1857, and on or about the 15th day of September, A. D. 1856, these defendants and said Johnson, then composing the

said firm of F. Parmelee & Co., and who having before then, and on or about the 9th day of July, A. D. 1855, procured the assignment from and through said Doty and Andrews to said F. Parmelee, for the use and benefit of said firm, of the said lease from said James and Thomas Crow to said Doty and Andrews, and said firm being the parties beneficially interested in said contract from said Flagler to said Parmelee as aforesaid, a copy whereof duly certified and marked Exhibit
217 "H" is hereto annexed as a part hereof, and the said firm having entered into the possession of said premises, and commenced the construction of a block of buildings thereon, became in want of money to carry on said work, and, being so in want of money, did, through the said Liberty Bigelow, who lived in said Massachusetts, and was related to the said complainant by marriage, apply to the said complainant, who was accustomed to lend money, to loan to the said firm the sum of fifty thousand dollars to enable them to carry on said work on said premises, then and there informing the said complainant as to the nature and character of the right and interest of said firm in the said premises, and offering him security thereon for the repayment of said money so proposed as aforesaid to be borrowed by said firm of said complainant.

And these defendants, further answering, say that afterwards, and on or about the said 15th day of September, A. D. 1856, it was corruptly, and contrary to the form of the statute both of said commonwealth and of said State of Illinois in each case made and provided, agreed
218 by and between said complainant, these defendants and said Johnson, that he, the said complainant, would lend and advance to these defendants and said Johnson the sum of fifty thousand dollars, to be repaid to said complainant by these defendants and said Johnson in five years, by instalments of ten thousand dollars a year, and, for giving such day of payments, these defendants and said Johnson should pay said complainant interest on said sum, so to be loaned, at the rate of twelve per centum per annum, and the payment of said sum of fifty thousand dollars and interest thereon by these defendants and said Johnson to the complainant to be secured by means of said premises; that, in order to express said corrupt and unlawful agreement in writing, and give and receive the said security on said premises, and at the same time conceal and disguise as much as possible the real nature of said transaction by the agreement of the parties aforesaid, the said deed of the said premises by these defendants, the said Johnson, and the wives of said last-named parties, respectively, to the said
219 complainant, was prepared substantially as set out in said bill of complaint, and also the said articles of agreement bearing date the said 15th day of September, A. D. 1856, in and by which the said complainant covenanted and agreed to and with these defendants and said Johnson, upon the payment by them of said fifty thousand dollars, to sell and convey the said premises to them, and these defendants and said Johnson covenanted and agreed, to and with the said complainant, to pay him, for said pieces or parcels of land, the sum of fifty thousand dollars, with interest thereon at the rate of ten per centum per annum, which said sum of fifty thousand dollars was to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five equal annual instalments from the first day of October, in the year eighteen hundred and fifty-six; that is to say, ten thousand dollars to be paid on the first day of October, eighteen hundred and fifty-seven, and the same amount on the first day of October, in each year thereafter, until the said sum of fifty thousand dollars be paid, interest on said sum of fifty thousand
220 dollars at the rate aforesaid to commence on the first day of

October, eighteen hundred and fifty-six, and to be paid at the Tremont Bank in the city of Boston, semi-annually, from said first day of October, on all sums remaining unpaid of said fifty thousand dollars, as by a copy of said articles of agreement attached to said bill of complaint, and to which reference is hereby made as a part hereof, will more fully appear.

And these defendants further say that, further to reduce to writing the said corrupt and unlawful agreement, and to conceal and disguise the real nature and character of said transaction, these defendants and said Johnson, by their privity and procurement and direction of the said complainant, and to enable him to obtain the other two per centum per annum upon said sum of fifty thousand dollars, so to be loaned as aforesaid, prepared, signed, and sealed their certain bond or writing obligatory to the said complainant, in and by which they acknowledged themselves to be held and firmly bound unto the said complainant in the penal sum of three thousand dollars, lawful money of the United
221 States, for the payment of which, well and truly to be made, they bound themselves, their heirs, executors, or administrators, jointly, severally, and firmly by the said presents, sealed with their seals the 15th day of September, in the year of our Lord one thousand eight hundred and fifty-six; to which there was a condition thereunder written to the effect that if these defendants and said Johnson should, on the first day of October, one thousand eight hundred and fifty-seven, deliver at the Tremont Bank, Boston, for the said complainant, the notes of these defendants and said Johnson, payable in six and twelve months, at said bank, for such sum as the interest at two per centum per annum should amount to on all the moneys remaining unpaid on said first day of October, upon certain articles bearing even date therewith, made by said complainant to and with these defendants and said Johnson, for the conveyance of certain real estate by said complainant to these defendants and said Johnson as therein described, and should, on the first day of October in each year, after 1857, deliver also at said bank the
222 notes of these defendants and said Johnson, or the survivor or survivors of them, for the interest at two per centum per annum on such sum as should remain unpaid on said articles, until the whole sum of fifty thousand dollars, mentioned in said articles, paid, and should make said notes payable at said bank to said complainant in six and twelve months from the time of so making the same, and should pay or cause to be paid all such notes so given, then said obligation to be void and of no effect, otherwise to remain in full force and effect, as by a copy of said bond or writing obligatory hereto annexed, marked Exhibit "I" and made a part of this answer, will more fully and at large appear.

And these defendants further say that, afterwards, prior to the 1st day of January, A. D. 1857, and on or about the first day of October, A. D. 1856, in pursuance of said corrupt and unlawful agreement, and the design aforesaid, and to carry the same into effect, they and said Johnson delivered to, and the said complainant accepted and received the said deed of said premises in said bill of complaint mentioned, and
223 the said bond was executed and then and there delivered to the said complainant within the said State of Illinois, and the said complainant, to wit, at Chicago aforesaid, delivered to these defendants and said Johnson the said articles of agreement.

And these defendants further say that the said fifty thousand dollars in said bill of complaint mentioned is the same sum of fifty thousand dollars so agreed to be loaned as aforesaid, and not other or different, and the same was loaned and advanced by the said complainant to

these defendants and the said Johnson, at the time in said bill mentioned, usuriously and corruptly, under and in pursuance of the said corrupt and unlawful agreement, so made and reduced to writing as aforesaid, and not otherwise, and the said deed and articles of agreement were given and received as security for the repayment of said loan, and not otherwise; which said agreement and the transaction aforesaid was made with reference, in all respects, to the laws of the State of Illinois, and is, as the defendants are advised and believe, to be governed
224 by the laws of said State, wherein the said lands are situate, and the said contract was made and principally to be performed.

And these defendants further say that, in part performance of the said corrupt and unlawful agreement, the said promisory notes were made and given as required by said bond, and on or about the 20th day of March, A. D. 1857, these defendants and said Johnson paid to the said complainant, as and for interest on the said loan of fifty thousand dollars, at the rate of twelve per centum per annum, the sum of three thousand dollars; on or about the 24th day of September, A. D. 1857, three thousand dollars; on or about the 27th day of March, A. D. 1858, three thousand dollars; on or about the 28th day of September, A. D. 1858, three thousand dollars; and these defendants, on or about the 28th day of March, A. D. 1859, paid the said complainant, as and for the interest on said loan at the rate of twelve per cent. per annum as aforesaid, the sum of three thousand dollars; and on or about the 26th day of September, A. D. 1859, the sum of three thousand dollars;
225 on or about the second day of April, A. D. 1860, the sum of three thousand dollars; on or about the 27th day of September, A. D. 1860, the sum of three thousand dollars; and on or about the 29th day of March, A. D. 1861, the sum of three thousand dollars, amounting in all to the sum of twenty-seven thousand dollars, which these defendants and said Johnson, and from and after November, 1858, these defendants, have paid to the said complainant as and for the interest alone upon the said sum of fifty thousand dollars, under and in pursuance of said corrupt and unlawful agreement, and forebearing and giving day of payment of said sum so loaned as aforesaid.

And these defendants, further answering, say that, in order to make the payments of interest on said sum of fifty thousand dollars in the city of Boston as aforesaid, when the same were payable, they were compelled to, and did, pay a large sum upon and in addition to the said several payments as the difference in exchange between the city
226 of Chicago, State of Illinois, and said city of Boston, the rate of exchange being between and varying from five to ten per centum; that the said complainant had said difference in exchange in view at the time of making said loan as aforesaid, and required said interest to be paid in Boston aforesaid, in order to avail himself of said difference in exchange, and to enjoy the advantages thereof. And these defendants say that said interest being at the rate of twelve per centum per annum, and said rate of exchange ranging from five to ten per centum, said payments became and were hard and oppressive. Wherefore these defendants, during the time of the making of said several payments, frequently applied to the said complainant to reduce and mittigate said exhorbitant and extortionate rate of interest on said money so borrowed as aforesaid, but the said complainant at all times refused to abate or reduce the same in any respect. And in the month of July last past, at Chicago aforesaid, said complainant demanded of these defendants all of the interest, accruing since April, A. D. 1861, on said sum of
227 fifty thousand dollars, at the rate as agreed and paid as aforesaid against which these defendants remonstrated with the said com-

plainant. Whereupon the said complainant unjustly and oppressively threatened and gave out to these defendants that he, having the power so to do, should proceed at once to eject them from the said premises and the buildings so erected by them thereon, unless they, the said defendants, complied with his demand and paid him all of said interest, and paid or secured the principal sum aforesaid.

And these defendants, further answering, say that, being advised that the said mortgage security in said bill of complaint mentioned, and the said corrupt and unlawful agreement, are subject to and governed by the laws of the said State of Illinois, they insist that, by reason thereof and of the making of the said corrupt and usurious agreement as aforesaid, the said complainant forfeited three-fold the amount of the whole interest so reserved as aforesaid; that by reason of the said complainant
228 taking as aforesaid interest on the said sum of fifty thousand dollars, at the rate of twelve per centum per annum, under and in pursuance of said corrupt agreement as aforesaid, the said complainant by the statute in such cases made and provided, and in force at the time of the making of said corrupt agreement, did thereby forfeit three-fold of the whole interest so taken as aforesaid.

And these defendants further say that, if the court should be of opinion that the said corrupt and unlawful agreement is subject to the laws of the Commonwealth of Massachusetts and governed thereby, then these defendants insists that by the statutes of said commonwealth, in force at the time of the making of said contract and above set out, the said complainant, by reason of said agreement, reserving twelve per centum per annum as interest on said sum of fifty thousand dollars, and taking such interest thereon at that rate as aforesaid, did thereby forfeit three-fold of the amount of interest thus unlawfully reserved or taken.

229 And these defendants further say that, if upon taking an account of the amount claimed to be due from these defendants to the said complainant, upon said alleged debt and security in said bill of complaint mentioned, any sum for principal should be found to be due to the said complainant, (but that there is any sum due to him these defendants deny,) then these defendants insist that the said sums so paid to the said complainant as aforesaid, for such interest under said corrupt and unlawful agreement, and all amounts so forfeited by said complainant as aforesaid, ought to be applied in payment of such sum so found due, to the extent of the amount so paid and forfeited as aforesaid.

And these defendants jointly and severally deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and
230 not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these or either of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRANK PARMELEE.
LIBERTY BIGELOW.
D. A. GAGE.

McALLISTER, JEWETT AND JACKSON,
Sol'rs, and of Counsel for Def'ts.

This indenture, made this tenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, between James Crow and Thomas G. Crow, of the city of Chicago, county of Cook, and State of Illinois, parties of the first part, and Theodorus Doty and Daniel Andrews, of the same place, parties of the second part, witnesseth
231 that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by said party of the second part, their executors, administrators, and assigns, hath demised and leased to the said party of the second part all those premises, situate, lying, and being in the city of Chicago, county of Cook, and State of Illinois, known and described as follows, to wit: Lots Nos. fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen:

To have and to hold the said above-described premises, with the appurtenances, unto the said party of the second part, their executors, administrators, and assigns, from the first day of May, in the year of our Lord one thousand eight hundred and fifty-four, for and during and until the first day of May, A. D. one thousand eight hundred and seventy-four, (1874.) And the said party of the second part, in consid-
232 eration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, doth covenant and agree with the said party of the first part, their heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of one thousand dollars per annum for the first ten years, payable quarterly, to wit, $250 on the first days of August, November, February, and May, during said term; at the expiration of the first ten years the rent for the next running ten years to be appraised by three disinterested persons, owners of real estate on Randolph or State streets, one to be chosen by the party of the first part, one by the party of the second part, and the two appraisers thus chosen shall choose the third one, and the three persons thus chosen shall determine the value of the rent of said premises; and also that they will pay, or cause to be paid, all taxes and assessments that may be laid, charged, or assessed on said demised premises pending the exist-
233 ence of this lease; or if at any time after any such taxes or assessments shall have become due and payable, the said party of the second part, or their legal representatives, shall neglect to pay such taxes or assessments, it may be lawful for the said party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be, so much additional and further rent for the above-demised premises, due from and payable by the said party of the second part, their executors, administrators, or assigns, and may be collected in the same manner, by distress or otherwise, as hereinafter provided for the collection of other rents to grow due hereon. And the said party of the second part further covenants with the said party of the first part that, at the expiration of the time in this lease mentioned, they will yield up the said demised premises to the said party of the first part in as good condition as when the same were en-
234 tered upon by the said party of the second, loss by fire, or inevitable accident, or ordinary wear excepted.

It is expressly understood and agreed, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants

herein contained, to be kept by the said party of the second part, their executors, administrators, or assigns, it shall and may be lawful for the said party of the first part, their heirs, executors, administrators, agent, attorney, or assigns, at their election to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to re-possess and enjoy as in their full and former estate, and to destrain for any rent that may be due
235 thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution and by law or not. And the said party of the second part in that hereby agrees to waive all legal rights which they may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way, meaning and intending hereby to give the said party of the first part, their heirs, executors, administrators, or assigns, a valid and first lien upon any and all the goods, chattels, and other property belonging to the party of the second part as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, their heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, their executors, administrators, and assigns, do hereby covenant to surrender and deliver up said above-
236 described premises and property peacably to said party of the first part, their heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid. And if they shall remain in possession of the same ten days after the notice of such default, or after the termination of this lease in any of the ways above named, they shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated. At the final termination of this lease the party of the first part is to purchase the buildings erected upon the above-described premises at what the said buildings shall be worth to them (the said first party) at that time, the worth or value of the said buildings to be appraised by three disinterested persons chosen in the manner above stated, who shall determine the value of said buildings, taking all circumstances into consideration, and the age, wear, &c.

237 The party of the second part shall have the privilege of purchasing the above-described leased premises at the termination of this lease for the sum of one hundred thousand ($100,000) dollars by giving thirty days' notice of their election so to do previous to said termination of said lease in writing.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

JAMES CROW. [SEAL.]
THOMAS G. CROW. [SEAL.]
THEODORUS DOTY. [SEAL.]
DANIEL ANDREWS. [SEAL.]

Daniel Andrews to Warren Parker—assignment.

CHICAGO, *March 15th*, 1854.

For value received, I do hereby assign all my right, title, interest, and claim in and to my interest of the within lease to Warren Parker.

DANIEL ANDREWS. [SEAL.]

Attest: F. A. HOWE.

No. 55107. Filed for record November 28th, 1854. Recorded in book 82 of deeds, page 682.

238 STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my office on the 28th day of November, A. D. 1854, and recorded in book No. 82 of deeds, on page 682, the parties to the same being James & Thomas Crow of the first part, & Theodorus Doty & D. Andrews of the second part.

{ Seal & 5-ct. rev. stamp cancelled. } In testimony whereof I have hereunto set my hand and affixed the seal of our said court at Chicago this eighth day of December, A. D. 1863.

WILLIAM L. CHURCH,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

Exhibits F, referred to in the annexed answer.—Frederick F. Flagler to Franklin Parmelee—agreement.

Articles of agreement made this first day of August, in the year
239 of our Lord one thousand eight hundred and fifty-five, between Frederick F. Flagler, of Newburg, in the State of New York, party of the first part, and Franklin Parmelee, of Chicago, in the State of Illinois, party of the second part, witnesseth:

That the said party of the first part, at the request of the party of the second part, and in consideration of the money to be first paid, and the covenants as herein expressed to be first performed by the party of the second part, hereby agrees to sell and assure to the said party of the second part, by a good and sufficient deed, with special covenants of warranty, and subject to a certain lease thereof to Theodorus Doty, Daniel Andrews, and O. C. McCracken, to wit:

That part of lot number fourteen, in block number thirteen, in Fort Dearborn addition to Chicago, commencing twenty feet north of the southwest corner of said lot, running thence north, on a line with State street, twenty feet, thence east one hundred and fifty feet, thence south twenty feet, thence west one hundred and fifty feet, to the place
240 of beginning, with the privileges and appurtenances thereunto belonging, or in any way appertaining. And the said party of the second part, in consideration of the premises, hereby agrees to pay to the said party of the first part, or to his attorney, executors, administrators, or assigns, the sum of five thousand dollars, to be paid as follows, that is to say: six hundred and twenty-five dollars in cash, the receipt of which is hereby confessed; six hundred and twenty-five dollars in six months from this date; twelve hundred and fifty dollars in one year from date; twelve hundred and fifty dollars in two years from date; and twelve hundred and fifty dollars in three years from this date, with

interest to be paid annually on the whole sum remaining unpaid, and on each of said payments annually, on the first day of August of each year, payable at the office of James Crow, Chicago; and also that he will well and faithfully, in due season, pay or cause to be paid all taxes and assessments, ordinary or extraordinary, that may be levied,
241 assessed, or imposed upon the said premises or appurtenances.

And it is mutually covenanted, and agreed, by and between the parties herewith, that, in case the said party of the second part shall make default, or fail to make any of the payments above mentioned at the time and times above limited, (the said time and times of payment being hereby declaimed to be an essential part of the contract,) or shall fail to perform punctually any of the covenants on his part, then, in such a case, this agreement, and all the covenants and agreements on the part of the said party of the first part herein contained, shall, at the option of the said party of the first part, his representatives and assigns, be, and are hereby, declared to be null and void, and no longer binding, and all the right or interest, either in law or equity, of said party of the second part shall cease and be determined, and all the payments which shall have been made hereon, or in pursuance hereof, shall be absolutely and forever forfeited to the said party of the first part; or, at the
242 election of the said party of the first part, his representatives or assigns, the covenant and liability of the said party of the second part shall continue and remain, obligating upon the said party of the second part, and may be enforced, and the said consideration money, and every part thereof, be collected by proper proceedings in law or equity from the said party of the second part, his heirs, executors, administrators, or assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

FREDERICK F. FLAGLER. [SEAL.]
FRANKLIN PARMELEE. [SEAL.]

Signed, sealed, and delivered in presence of—

I do hereby covenant, agree, and declare that the written contract is made for the use, benefit, and on the behalf of the omnibus company, in the city of Chicago, known and styled Franklin, Parmelee & Co.

August 2nd, 1855.

FRANKLIN PARMELEE. [SEAL.]

No. 62740. Filed for record September 19th, 1855.

243 STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my office on the nineteenth day of September, A. D. 1855, and recorded in book No. 99 of deeds, on page 331, the parties to the same being F. T. Flagler, on the first part, and Franklin Parmelee, of the second part.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 8 day of December, A. D. 1863.

{Seal & 5-c. rev. stamp cancelled.}

WILLIAM L. CHURCH,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

Exhibit "H," referred to in the annexed answer.

COMMONWEALTH OF MASSACHUSETTS:

[Picture.]

244 In the year one thousand eight hundred and forty-six.

An act concerning usury.

Be it enacted by the senate and house of representatives in general court assembled, and by the authority of the same, as follows:

SECTION 1. Whenever in any action brought on any contract or assurance for the payment of money hereafter made, it shall appear that a greater rate of interest has been directly or indirectly reserved, taken, or received than is allowed by law, the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the interest unlawfully reserved or taken, and no more.

SECTION 2. Whenever a greater rate of interest than is allowed by law shall hereafter be paid the party paying the same may recover back three-fold the amount of the unlawful interest so paid, and no more.

SECTION 3. So much of the second and third sections of the thirty-fifth chapter of the revised statutes as is inconsistant with this
245 act is hereby repealed.

HOUSE OF REPRESENTATIVES,
April 7th, 1846.

Passed to be enacted.

SAN. H. WALLEY, JR., *Speaker.*

IN SENATE, *April 8th*, 1846.

Passed to be enacted.

W. B. CALHOUN, *President.*

APRIL 8TH, 1846.

Approved:

GEO. N. BRIGGS.

SECRETARY'S DEP'T, BOSTON,
Dec'r 17, 1863.

The foregoing is a true copy of the original act on file in this dep't. Witness the seal of said comm'th, the date first above written.

[SEAL.] CHA'S W. LOVETT,
Dep. Sec't'y.

Exhibit "G," referred to in the annexed answer.

Know all men by these presents that we, Liberty Bigelow, of the city of Boston, and David A. Gage, Walter S. Johnson, and Franklin Parmelee, of the city of Chicago, county of Cook, and State of Illinois, are held and firmly bound unto Daniel Lawrence, of Medford,
246 Middlesex County, and State of Massachusetts, in the penal sum of three thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, or administrators, jointly and severally, firmly by these presents, sealed with our seals this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six.

The condition of this obligation is such, that if the above-named obligors, or either of them, shall, on the first day of October, one thousand eight hundred and fifty-seven, deliver at the Tremont Bank, Boston, for the said obligee, the notes of the said obligors, payable in six and twelve months at said bank for such sum as the interest at two per centum per annum shall amount to on all the moneys remaining unpaid on said first day of October upon certain articles bearing even date herewith, made by said obligee to and with said obligors for the conveyance of certain real estate by said obligee to said obligors as therein
247 described, and shall, on the first day of October in each year after eighteen hundred and fifty-seven, deliver also at said bank the notes of said obligors, or the survivor or survivors of them, for the interest at two per centum per annum, or such sum as shall remain unpaid on said articles until the whole sum of fifty thousand dollars mentioned in said articles be paid, and shall make said notes payable at said bank to said obligee in six and twelve months from the time of so making the same, and shall pay, or cause to be paid, all such notes so given, then this obligation to be void and of no effect; otherwise to remain in full force and effect.

In presence of—

W'M W. STEWART.	LIBERTY BIGELOW.
W'M W. STEWART.	DAVID A. GAGE.
W'M W. STEWART.	WALTER S. JOHNSON.
W'M W. STEWART.	FRANKLIN PARMELEE.

STATE OF ILLINOIS, *Cook County, ss:*

I, W'm W. Stewart, a notary public in said county, in the State
248 aforesaid, do hereby certify that Liberty Bigelow, David A. Gage, Walter S. Johnson, and Franklin Parmelee, who are personally known by me to be the same persons whose names are subscribed to the annexed bond to Daniel Lawrence, appeared before me this day in person and acknowledged that they had signed, sealed, and delivered the said instrument of writing as his free act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal this seventeenth day of October, A. D. 1856.

[L. S.] W'M W. STEWART,
Notary Public.

Exhibit "I," referred to in the annexed answer.

And afterwards, to wit, on the fifth day of March, in the year last aforesaid, came Daniel Lawrence by his solicitor, and filed in the office of the clerk of the said court his certain exceptions in writing to the answer of Liberty Bigelow, David A. Gage, and Franklin Parme-
249 lee, and also to the answer of Walter S. Johnson, to the cross-bill of said Daniel Lawrence, and also his certain demurrer to the cross-bill of Walter S. Johnson; which said exceptions and demurrer are in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, March term, A. D. 1864.

DANIEL LAWRENCE
vs.
LIBERTY BIGELOW, HARRIET A. BIGELOW, Franklin Parmelee, Adeline Parmelee, David A. Gage, Eliza M. Gage, Walter S. Johnson, Electa M. Johnson. } Cross-bill.

This cross-bill was filed in the case of Liberty Bigelow, David A. Gage, and Franklin Parmelee, against said Daniel Lawrence in said court.

Exceptions taken by said Daniel Lawrence, complainant, in said
250 cross-bill, to the joint and several answers, so called, of the defendants, Liberty Bigelow, David A. Gage, and Franklin Parmelee to the said cross-bill for impertinence and scandal and irrelavancy and insufficiency.

First exception. For that the said supposed answer is impertinent as to all that part in which it states as follows, that is to say: that part beginning on page 7 of said supposed answer, at line 14, with the words, "And these defendants further say," &c., down to and including the words "herein set forth and alleged," on the 16th line of page 8 of said supposed answer.

Second exception. For that the said supposed answer is also impertinent as to all that part of said supposed answer from and including the words, "And these defendants, further answering, say," on last line but one on 23d page of said supposed answer, down to and including "as aforesaid," on the 8th line of the 43d page.

251 Third exception. For that the said supposed answer is scandalous as to all of the said part and matters thereof referred to and embraced in the foregoing first exception.

Fourth exception. For that the said supposed answer is scandalous to all the said parts and matter thereof referred to and embraced in the foregoing second exception.

Fifth exception. For that the whole of said supposed answer is insufficient as an answer to said cross-bill, in this, that it fails to answer whether or not said deed absolute, together with said agreement for a resale of said premises, being the contracts referred to in said cross-bill, constitute and are a mortgage security for a loan of money from said complainant to said F. Parmelee & Co.; although said cross-bill expressly avers that the same were, and were intended to be, a security for the loan of money, and calls for an answer thereto the same as though they were particularly interrogated thereto; and the im-
252 pertinent matter in said answer is so blended with what might otherwise be pertinent, that the whole of them are exceptionable.

Sixth exception. For that the whole of said supposed answer is improper or impertinent, in this, that it is inconsistent with the original bill which these defendants filed against the complainant, for that in the original bill the ground of relief is based upon the fact, sworn to by the said complainants in the original bill, that said agreement for a sale of said premises was an absolute agreement for the conveyance of the premises on the terms therein set forth, and that the said complainants agreed to pay 10 per cent. interest on said sum of fifty thousand dol-

lars, for which said premises were sold, and said Lawrence agreed to receive 10 per cent. interest, and they therein averred a readiness to pay said sum of fifty thousand dollars with ten per cent. interest; while now, in said answer, said parties state that such was not the contract,
but that the agreement was to pay 12 per cent. interest on a loan
253 of money, and then insists on the enforcement of the supposed laws imposing penalties and forfeitures for the alleged usurious agreement. The new matter thus set up in their said supposed answer does not fortify the sworn facts of said original bill, nor is the new matter consistent with the supposed truth of the ground of relief in the original bill presented.

In all which particulars the said complainant excepts to the supposed answer of the said defendants as evasive, imperfect, impertinent, scandalous, and irrelevant, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto; or if the court should adjudge the answer sufficient, but to be subject to the said exceptions for scandal or impertinence, &c., that then [that] such parts excepted to may be expunged from said supposed answer.

CHARLES A. GREGORY,
Counsel for said Lawrence.

254 STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, March term, 1864, in chancery.

DANIEL LAWRENCE
vs.
LIBERTY BIGELOW, HARRIET A. BIGELOW, David A. Gage, Eliza M. Gage, Franklin Parmelee, Adaline Parmelee, Walter S. Johnson, and Electa M. Johnson.

Being the cross-bill filed in the original case of Liberty Bigelow, David A. Gage, and Franklin Parmelee against Daniel Lawrence.

Exceptions taken by said Daniel Lawrence, the complainant, in the cross-bill, to the seperate answer, so called, of Walter S. Johnson to the said cross-bill for impertinence and scandal and irrelevancy and insufficiency and duplicity.

First exception. For that the said supposed answer is double
255 and impertinent in this, that it insists that said deed absolute, in form and the said agreement, for the conveyance of said premises, were a sale and an agreement back to resell said premises absolutely, and were not intended as a mortgage, and do not constitute a mortgage under the circumstances, while the supposed answer at the same time admits and states in another part thereof that said agreements did and do constitute a mortgage security for the repayment of a loan of money made by this complainant to said F. Parmelee & Co.

Second exception. For that the said supposed answer is contradictory of itself, in that it denies the allegations of the cross-bill; that said agreements referred to in the cross-bill are a mortgage; then it states that they are a mortgage upon an usurious agreement, &c. The said supposed answer presents two issues, of which the affirmation of the one is a denial of the other.

Third exception. For that the supposed answer does not offer to pay the principal and legal interest due to the said Daniel Lawrence

256 upon said mortgage, admitted to be a mortgage by said supposed answer, but sets up usury as a defence, and claims the supposed penalties and forfeitures therefor; whereas it ought to waive all penalities and forfeitures as to so much at least of said money as can be collected out of said premises; for the answer discloses that said defendant has no right, title, or interest in said premises, and hence he, said Johnson, is concerned to set up the supposed usury and claim the benefit thereof only as to such a remainder of said loaned money as said complainant shall seek to collect from said defendant personally, after having exhausted said mortgage security.

Fourth exception. For that the said supposed answer is improper and impertinent, for that it blends together matter which is impertinent, and matter which otherwise might be pertinent, so that they cannot be seperated.

Fifth exception. For that the said supposed usury is impertinent
257 as to all that part thereof in which it states as follows, that is to say, that part beginning on page 7 of said supposed answer, at line 14, with the words, "And this defendant further says," down to and including the words "set forth and alleged," on page 8, at line 19.

Sixth exception. For that said supposed answer is impertinent as to all that part thereof in which it states as follows, that is to say, that part from and including the words, "And this defendant further, &c.," on page 25 of said supposed answer, at line 4, down to and including the words "a loan of money," at page 44, at line 3rd. All this is impertinent, because, theretofore in said answer, the said defendant answers that the said agreement and deed in said cross-bill referred to were absolute, and were not a mortgage, and that the rate of interest agreed to be paid was 10 per cent. interest on said fifty thousand dollars.

Seventh exception. For that the part of said supposed answer
258 referred to in the fifth exception above referred to is scandalous.

Eighth exception. For that the part of said supposed answer referred to in the sixth exception above referred to is scandalous.

In all which particulars the said complainant excepts to the supposed answer of said defendants as double, evasive, imperfect, impertinent, scandalous, and irrelevant and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto; or if the court should adjudge the supposed answer sufficient, then that such parts as are excepted to for impertinence, scandal, &c., may be expunged from said supposed answer.

CHARLES A. GREGORY,
Counsel for said Lawrence.

259 STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, March term, A. D. 1864, in chancery.

WALTER S. JOHNSON
vs.
DANIEL LAWRENCE, DAVID A. GAGE, ELIZA M. Gage, Franklin Parmelee, Adaline Parmelee, Liberty Bigelow, and Harriet Bigelow.

Being the cross-bill of said Johnson, filed in the original case of Liberty Bigelow, Franklin Parmelee, and David A. Gage vs. Daniel Lawrence.

This defendant, Daniel Lawrence, by protestation, not confessing or acknowledging all or any of the matters and things in said complain-

ant's cross-bill to be true in such manner and form as the same are therein set forth and alleged, doth demurr thereto, and for cause
260 of demurrer, showeth:

1st. That the said complainant hath not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such relief as is thereby sought or prayed for, from or against this defendant.

2nd. That the said cross-bill is multifarious, in this, that the said bill first frames and states a pretended case for relief on the ground that the said deed, absolute in form, and the agreement back for a resale of said premises, form and constitute an absolute conveyance and agreement for resale of said premises, and that said defendant is thereby absolutely bound to make a deed free and clear of all incumbrances of said land to said Bigelow, Gage, Parmelee, and Johnson, and that said defendant is unable to make such a deed, conveying good title, &c., while at the same time and in the same bill the complainant states that the said deed or agreement for a reconveyance are a mortgage, and the money to be by him, and said Bigelow, Gage, and Parmelee paid, is money of
261 this defendant, and for the repayment of which said land was thus mortgaged; and further, while so admitting said transactions to be a loan and a mortgage, this complainant insists he has no interest in said premises, and yet asks this court to decree penalities and forfeitures in his favor and against this defendant, on account that said contract of loan and mortgage was an usurious contract, when it appears that said Lawrence only asks to make his said money out of said mortgaged premises in the first instance, and does not ask to proceed against said Johnson, unless the said premises shall prove insufficient to pay the said debt, and then asks to go against said Johnson only for the remainder, while said Johnson sets up usury and demands a forfeiture as to the whole part of said loan.

3rd. For that said cross-bill is multifarious, in that it appears by the said bill that the same is exhibited against this defendant, Daniel
262 Lawrence, and also David A. Gage, Eliza M. Gage, Franklin Parmelee, Adaline Parmelee, Liberty Bigelow, and Harriet A. Bigelow, for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, by reason of which distinct matters the said plaintiff's said bill is drawn out to a considerable length; and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters together, which do not depend on each other in the said bill, the pleadings, orders, and proceedings will, in the progress of said suit, be intricate and prolix, and this defendant put to unnecessary charges in taking copies of the same, although several parts thereof no relate to or concern him, for which reason and for divers other errors appearing in the said bill, this defendant doth demurr thereto; and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answers to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this
263 behalf sustained.

4th. For that the said cross-bill is needless, since the said Johnson can obtain all the relief his case requires upon his answer to this cross-bill of said Daniel Lawrence.

5th. For that he does not offer to do equity by his said cross-bill, inasmuch as he admits that the money was borrowed, and now asks to be permitted to keep it, without paying either principal or interest.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill and to all

the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

CHARLES A. GREGORY,
Counsel for said Daniel Lawrence.

264 And afterwards, to wit, on the seventh day of March, 1864, the following order was entered of record, viz:

LIBERTY BIGELOW, DAVID A. GAGE, & FRANKlin Parmelee *vs.* DANIEL LAWRENCE.	Bill.

And now comes the parties hereto, and the death of Adaline Parmelee having been suggested to the court, said suit is abated as to the said Adaline Parmelee, whose death is suggested of record as aforesaid.

And afterwards, to wit, on the 24th day of March, in the year last aforesaid, came Daniel Lawrence, and filed in the office of the clerk of said court a certain notice and certificate of publication in the words and figures following, to wit:

265 This certifies that a notice, of which the annexed printed slip is a true copy, was published for four (4) successive weeks, to wit, twenty-four (24) times in the daily edition of The Chicago Post, a newspaper published in the city of Chicago, and of general circulation throughout Cook County, and the State of Illinois, and that the date of the first paper containing the same was the thirtieth day of October, 1863, and that the date of the last paper containing the same was the thirtieth day of November, A. D. 1863, and that we have received nineteen (19) dollars for publishing the same.

Dated at Chicago this thirtieth day of November, 1863.

JA'S W. SHEAHAN, *Pres't.*

CHA'S A. STEWART, *Sec'y.*

266 STATE OF ILLINOIS, *County of Cook, ss:*

Superior court of Chicago.

LIBERTY BIGELOW, DAVID A. GAGE, & FRANKlin Parmelee *vs.* DANIEL LAWRENCE.	In chancery.—Bill.
DANIEL LAWRENCE *vs.* LIBERTY BIGELOW, HARRIET A. BIGELOW, David A. Gage, Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, Franklin Parmelee, & Adaline Parmelee.	In chancery.—Cross-bill.

Whereas it appears from a certain affidavit on file in the above-entitled cause that Harriet A. Bigelow, Walter S. Johnson, and Electa M. Johnson are not residents of the State of Illinois, and that said Eliza

M. Gage hath gone out of the State of Illinois, so that process
267 cannot be served upon them, notice is hereby given to the said Harriet A. Bigelow, Walter S. Johnson, Electa M. Johnson, and Eliza M. Gage that the complainant filed his cross-bill of complaint in said court, on the chancery side thereof, on the sixth day of October, 1863, and that a summons thereupon issued out of said court against said defendants, returnable on the first Monday of November, 1863, as by law required:

Now, unless you, the said Harriet A. Bigelow, Walter S. Johnson, and Eliza M. Gage, shall personally be and appear before said superior court of Chicago, of Cook County, on the first day of the next term thereof, to be holden at Chicago, in said county, on the first Monday of November, A. D. 1863, and plead, answer, or demur to the said complainant's bill of complaint, the same, and the matters and things therein charged and stated, will be taken as confessed, and a decree entered against you according to the prayer of said bill.

THOMAS B. CARTER, *Clerk.*

CHARLES A. GREGORY,
Compl't's Sol'r.

Oct. 30, 4, 10.

268 And afterwards, to wit, on the twenty-fifth day of March, 1864, the following order was entered of record, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee *vs.* DANIEL LAWRENCE.	Bill & cross-bill.

In the case of the cross-bill of Daniel Lawrence against Bigelow, Parmelee, Gage, Johnson, and others, the court, being fully advised, rendered a decision upon the exceptions taken and filed by said Lawrence to the joint answer of Bigelow, Parmelee, and Gage, overruling said exceptions, and a like decision overruling the exceptions of Lawrence to the seperate answer of Johnson; and thereupon the said Lawrence, by his counsel, then and there excepted to the ruling and decision of said court.

In the case of the cross-bill of Johnson against Lawrence, Bigelow, and others, the court rendered a decision upon the demurrer of
269 said Lawrence to said bill sustaining said demurrer, and dismissing said bill at complainant's costs.

And afterwards, to wit, on the 26th day of March, in the year last aforesaid, came Daniel Lawrence, and filed in the office of the clerk of said court his certain replication to the answer of Liberty Bigelow, David A. Gage, and Franklin Parmelee, to the cross-bill of said Daniel Lawrence, in the words and figures following, to wit:

In the superior court of Chicago, in chancery.

DANIEL LAWRENCE. *vs.* LIBERTY BIGELOW, DAVID A. GAGE, FRANKlin Parmelee, Walter S. Johnson & ot'ers.	Cross-bill in the case of Liberty Bigelow & others vs. Daniel Lawrence.

The replication of Daniel Lawrence to the joint and several answers of Liberty Bigelow, David A. Gage, and Franklin Parmelee.

This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception

270 which can be taken to the manifest insufficiencies of the said answer, for replication thereto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready and willing to aver and prove as this honorable court shall direct, and he humbly prays as in and by said bill he has prayed already.

DANIEL LAWRENCE,
By C. A. GREGORY,
His Attorney.

C. A. GREGORY,
Solicitor, & of Counsel for Complainant in said Cross-bill.

271 And afterwards, to wit, on the same day and year last aforesaid, came Daniel Lawrence and filed in the office of the clerk of said court his certain replication to the seperate answer of Walter S. Johnson to his cross-bill in the words and figures following, to wit:

In the superior court of Chicago, in chancery.

DANIEL LAWRENCE *vs.* LIBERTY BIGELOW, DAVID A. GAGE, FRANKLIN PARMELEE, WALTER S. JOHNSON, and others.	Cross-bill in the case of Liberty Bigelow & others vs. Daniel Lawrence.

The replication of Daniel Lawrence to the seperate answer of Walter S. Johnson.

This repliant, now and at all times saving to himself all benefit & advantage of exception to the manifold insufficiencies of the said answer, for replication thereto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto,
272 and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready and willing to aver and prove as this honorable court shall direct, and he humbly prays as in and by said bill he has already prayed.

DANIEL LAWRENCE,
By C. A. GREGORY,
His Attorney.

C. A. GREGORY,
Solicitor, & of Cousel for Complainant in said Cross-bill.

And afterwards, to wit, on the second day of May, in the year last aforesaid, came the said Daniel Lawrence and filed in the office of the clerk of said court a certain deposition in the words and figures following, to wit:

273 Interrogatory No. 1. Do you know the parties David A. Gage, Liberty Bigelow, and Franklin Parmelee, and also Walter S.

Johnson, and also the said Daniel Lawrence, the defendant, or either & which of them, and how long have you known them respectively, or such of them as you do know? and state their present & past places of residence from the year 1856 to the present time, so far as you know the same. Did you ever reside in the city of Chicago, Illinois; and, if yea, what was your business while there? When did you go there, & when did you leave there, if at all, and where is your present place of residence, and how old are you? With whom are you engaged in business in Chicago, if with any one, and where precisely was your place or office of business while in Chicago? Did you ever know a firm under the name of F. Parmelee & Co.? If yea, who composed the firm, what was their business, and where was their office or place of business? Declare the truth and your utmost knowledge and remembrance herein.

Interrogatory No. 2. Whether or not do you know, and have
274 you or not at any time and how long time known or been acquainted with the tenement & premises situate on or about the southeast corner of Randolph and State streets, in the city of Chicago, county of Cook, and State of Illinois, known by the name of Garrett Block, and being the land & building described as follows, viz: Lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight feet of lot number fourteen, (14,) in said block thirteen; and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, to the place of beginning? Do you know what is in litigation in this suit?

Interrogatory No. 3. Have you any letters in your possession written by any of the parties to this suit to said Daniel Lawrence touching the matters in litigation in this suit? If yea, produce the same and
275 append them to your deposition as a part thereof, properly marked as exhibit, so as to identify them. Do you know the character and manner of handwriting of said Liberty Bigelow and of said Franklin Parmelee, and have you ever seen either or both of them write, and which of them? State whether or no is the body of each of said letters (by you produced, if any you do produce) and the name or names thereto subscribed the same handwriting, and state in whose handwriting the body of said letter or letters and the name or names thereto subscribed is or are written, if you know. State where and from whose possession you got said letters, (if any you say you have,) and state to whom and by whom said letters were addressed. State when you first saw said letters. Declare the truth and your utmost knowledge and rembrance herein.

Interrogatory No. 4. Look upon each of the said letters by you produced and identified as aforesaid, (if any you do produce,) and read their contents, and then state whether you know by any conversation
276 or conversations with said Gage, Parmelee, Johnson, or Liberty Bigelow, or either of them, or how otherwise, what loan of money and what indebtedness is therein in each or all or either of said letters referred to and meant by said letters, and concerning what transaction or transactions said letters speak; and if you say you do know, then state how do you know, and declare the truth and the utmost of your knowledge and remembrance herein.

Interrogatory No. 5. Produce to the commissioner and annex to your deposition herein, and as a part of the same, a certified copy of a certain deed from said Bigelow, Gage, Parmelee, and Johnson, and their wives,

to said Daniel Lawrence, and also a certified copy of a certain contract or agreement between said Daniel Lawrence, party of the first part therein, and said Bigelow, Gage, Parmelee, and Johnson, parties of the second part therein, each bearing date September 15, 1856, and each describing and concerning the real estate described in the interrog-
277 atory numbered 2, herein preceding; read said certified copies, and then state whether the original of said deed and of said contract or agreement were made, executed, and delivered by the respective parties or not, and your knowledge and means of knowledge on this point; and state for what purpose and object the said deed and contract or agreements were made, executed, and delivered by and between said parties thereto, if you know from any statements or declarations made to you or in your presence and hearing by others, the said Gage, or Parmelee, or Johnson, or Bigelow, and which of them, (or in any other way and how otherwise you know;) and if you have ever heard either of them make any statements or declarations concerning the same, state what, any, and all such declarations or statements are or were, and when made and by which of them.

Interrogatory No. 6. Are or are not the said Bigelow, Gage, Parmelee, and Johnson indebted unto the said Daniel Lawrence in any sum of money as you know, or do for any and what reason believe? If
278 yea, in what sum of money are they so indebted unto said Daniel Lawrence, and on what account are they so indebted, and when did the said intebtedness accrue, if you know? Whether or no did the said Daniel Lawrence make any application in the month of April, 1861, or at any and what time since then, to said F. Parmelee & Co., or either member of said firm, for payment of said indebtedness, or any part thereof, and when and where and how did he make such application or applications? If you have any knowledge on this subject, state the same and what it it. Declare the truth and the utmost of your knowledge and remembrance herein.

Interrogatory No. 7. If you state that the said firm of F. Parmelee & Co. was indebted to the said Daniel Lawrence, state whether any security, real estate or otherwise, and what, was given by said F. Parmelee & Co. to said Daniel Lawrence to secure the payment unto said Daniel Lawrence of said indebtedness. If you answer that any real estate security was so given to said Daniel Lawrence, state what
279 the same was or is and where situated, and how such security was effected, and how you know the same. Declare the truth and the utmost of your knowledge and remembrance herein.

Interrogatory No. 8. State whether or no did you ever and when, on any and what occasion or occasions, have the said Gage, Parmelee, Johnson, or Bigelow, or any one of them, and which of them, say or declare that the said firm of F. Parmelee & Co. had borrowed of Daniel Lawrence fifty thousand dollars, and declare anything touching the purpose for which said money was borrowed, or how said money was applied and used by them. Declare the truth and your utmost knowledge and remembrance herein.

Interrogatory No. 9. State whether or no did you ever before the bringing of this suit, and when, on any and what occasion or occasions, hear the said Gage, Johnson, Parmelee, or Bigelow, or any and which of them, say or declare anything and what, touching or concerning
280 their, or any and which, of their right or title as between themselves and said Daniel Lawrence to the premises and real estate described in interrogatory No. 2, foregoing. Declare the truth and the utmost of your knowledge herein.

Interrogatory No. 10. If in answer to any former interrogatory you have produced a certain letter dated "Chicago, Oct. 13, 1861," and addressed to "Daniel Lawrence," and signed "F. Parmelee & Co.," relating to the matters in litigation in this suit, look upon the back of said letter and state whether there is anything written thereon on the back; and, if yea, in whose handwriting is the same, if you know? Did you ever see said Daniel Lawrence write? and state if there is any writing of his on the back of said letter, and when was the same written there and how did it happen to be written there, if you know. State what has been the habit and practice of said Daniel Lawrence as to preserving copies of answers by him written to letters by him received,
281 if you know; and how he preserves such copies, if at all; and state how long ago you first saw the writing on the back of said letter, and state here in your answer an exact copy of the writing on the back of said letter, and if you have not produced said letter referred to herein do now produce it and append it hereto.

If the witness produces a certain letter dated "Boston, Nov. 2nd, 1861," and addressed to "Daniel Lawrence, esq.," and signed "Liberty Bigelow," the same interrogatory and directions will be put to the witness as in interrogatory No. 10, but with reference to the letter of said Liberty Bigelow herein referred to.

CHARLES A. GREGORY,
Att'y, Sol'r for Lawrence.

Cross-interrogatories to be propounded to the witness Samuel C. Lawrence, examined on behalf of the complainant, Daniel Lawrence, in the cross-bill filed by him in the superior court of Chicago, on the chancery side thereof, against Liberty Bigelow, David A. Gage, and others, defendants in said bill

282 Cross-interrogatory first. What is your age, occupation; where do you carry on business; how long have you known said Daniel Lawrence; where does he reside; what business has he been engaged in for some years back; what business now, at what place, and how long has he carried on the same at such place?

Second. Are you in any wise related to the said Daniel Lawrence; and, if yea, how?

Third. Is the said Liberty Bigelow in any wise related to said Daniel Lawrence; and, if yea, how?

Fourth. State whether or not the said Daniel Lawrence is a man of wealth; whether or not he has been accustomed for any time heretofore to loan money, and whether he has had other money transactions with parties in the city of Chicago, or elsewhere, in the State of Illinois, beside that in question in this suit; whether such other transac-
283 tions were loans, and whether there have been several of them, or how many.

Fifth. Are you able to give any reasons or inducements for said Daniel Lawrence investing his money by way of loans in the State of Illinois rather than Massachusetts, where he resided? If yea, state what such reasons or inducements were.

Sixth. Were you ever interested in the business of loaning money or discounting paper in the city of Chicago? If yea, when did you commence and when cease, and did the said Daniel Lawrence furnish or aid or assist in furnishing any of the means for said business?

Seventh. Is it not true that the principle inducement to said Daniel Lawrence loaning his money to parties in Chicago was to get a higher rate of interest than is allowed in Massachusetts?

Eighth. If you say that the parties Liberty Bigelow, David A. Gage, Franklin Parmelee, and Walter Johnson composed the firm of
284 Parmelee & Co. in the year 1856, and were doing business in Chicago under that name, and that the said Daniel Lawrence loaned the fifty thousand dollars, will you state how you know that said Lawrence made any such loan; were you present at any arrangement being made for such loan; if yea, what was the rate of interest per annum which said F. Parmelee & Co. were to pay said Daniel Lawrence on such loan? Do you not know that it was to be at the rate of twelve per centum per annum; at least, have you not so understood the arrangement from said Lawrence?

Ninth. Have you ever seen a bond in the possession of said Daniel Lawrence, or under his control, made by said Liberty Bigelow, David A. Gage, Franklin Parmelee, & Walter S. Johnson to said Daniel Lawrence, bearing date the 15th day of September, A. D. 1856, conditioned in substance for the payment of two per cent. per annum on the fifty thousand dollars mentioned in articles of agreement of Lawrence with the same parties, bearing the same date? If you saw any such bond, please state when and where you have seen the same, and if you
285 have in your possession the other papers mentioned in the direct interrogatories to you, and have not the said bond, please state the reason why you have not said bond; and if you have said bond, please attach a copy thereof, examined and duly certified and marked by you, to your deposition. If you have not got said bond, will you request the said Daniel Lawrence to furnish the same to you before you close your deposition. If he refuses to furnish to you the said bond, please state the fact accordingly; and in case he shall furnish said bond to you, then please attach an examined copy thereof to your deposition as above directed.

Tenth. Have you requested the said Daniel Lawrence to furnish or produce to you the said bond, so that a copy thereof may be attached as above directed? If yea, did you get the same? If you have not requested him, why did you not make such request?

Lastly. When and where did you come into the possession of the papers of said Daniel Lawrence, referred to in the direct
286 interrogatories to you; under what circumstances did you get them? Will you please to state the whole amount which the said Lawrence has received of the defendants, or any of them, on account of said fifty thousand dollars, and whether the same was not received as interest alone. State fully and particularly.

McALLISTER, JEWETT & JACKSON,
Sol'rs for Def'ts.

It is hereby stipulated that upon the filing of the foregoing cross-interrogatories a commission may issue at once to the commissioner named in the notice attached to the direct interrogatories herein.

March 26, 1864.

McALLISTER, JEWETT & JACKSON,
Sol'rs for Def'ts.

The deposition of Samuel C. Lawrence, of Medford, in the county of Middlesex, doing business in Boston, in the county of Suffolk, and State of Massachusetss, a witness of lawful age, produced, sworn, and examined on his corporal oath, on the fifth day of April, in the
287 year of our Lord one thousand eight hundred and sixty-four, at the office of Robert Treat Paine, jr., in the city of Boston, in the

county of Suffolk, and State of Massachusetts aforesaid, by me, Robert Treat Paine, (junior of the name,) a commissioner duly appointed by a dedimus potestatum or commission issued out of the clerk's office of the superior court of Chicago, of Cook County, in the State of Illinois, bearing teste in the name of Thomas B. Carter, esq., clerk of the said court, with the seal of the said court affixed thereto, and to me directed as such commissioner for the examination of the said Samuel C. Lawrence, a witness in a certain suit and matter in controversy now pending and undetermined in the said superior court of Chicago, wherein Liberty Bigelow, David A. Gage, and Franklin Parmelee are plaintiff, and Daniel Lawrence is defendant, and the cross-bill thereto, wherein said Daniel Lawrence is plaintiff, and Liberty Bigelow, David A. Gage, Franklin Parmelee, Walter S. Johnson, Eliza M. Gage, Electa M. Johnson, Harriet A. Bigelow, impleaded with Adaline Parmelee, de-
288 ceased, are defendants, in behalf of the said Daniel Lawrence, as well upon the cross-interrogatories of all the other parties last above named as on the interrogatories of the said Daniel A. Lawrence, which are attached to or enclosed with the said commission, and upon none others. The said Samuel C. Lawrence being first duly sworn by me, as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows:

Answer to first interrogatory. I know all the parties named in this interrogatory. Daniel Lawrence is my father, and I have known him and Liberty Bigelow from my childhood. David A. Gage and Franklin Parmelee and Walter S. Johnson I have known since the spring of eighteen hundred and fifty-six. Said Lawrence has resided in
289 Medford since said year. Bigelow resided in Chicago from December, 1856, till the spring of 1858, about which time he removed to Melrose, in this State, and has since then resided at that place. During the greater part of the year 1856 he lived at Melrose, though he made long visits at Chicago. Said Gage lived at Chicago in the year 1856, 1857, 1858. Said Parmelee and Johnson lived at Chicago also in the year 1856 and 1857. I do not know where Gage, Parmelee, and Johnson now lives. I have resided in Chicago. I went there in April, 1856, for the first time, and remained there a short time, and went there to reside in December, 1856; remained there until the spring of 1858, and then returned to Medford in this State, where I have since resided, doing business in Boston. My business at Chicago was banking. I was engaged in it with said Liberty Bigelow, under the firm name of Bigelow and Lawrence. Our place of business was Garrett Block, on the corner of State and Randolph streets. I knew the
290 firm of F. Parmelee & Co., which was composed at that time of Franklin Parmelee, David A. Gage, Liberty Bigelow, and Walter S. Johnson, the parties in this controversy. Their office was in Garrett Block also, a few doors from my office. Their business was omnibus, express, and baggage delivery. I am thirty-one years old.

Answer to second interrogatory. I know the said tenement and premises. I first became acquainted with them in April, 1856, when I went to Chicago on purpose to examine them and their value; at this time a part of the building had not been built. I knew all about them until I left Chicago in 1858. I do know what is in litigation in this suit.

Answer to third interrogatory. I have in my possession two letters, both written by Liberty Bigelow to Daniel Lawrence. These are the

letters. (The witness here produced the two letters, which were marked by me Exhibit "A," and Exhibit "B," with my initials, Com'r R. T.
291 P., Jr.) I know the handwriting of Liberty Bigelow and of Franklin Parmelee, and have often seen both of them write. The body of these two letters and the signatures to them are in the same handwriting—all that of Liberty Bigelow. Both these letters are addressed by Liberty Bigelow to Daniel Lawrence. I received them both from Daniel Lawrence in my office in Boston.

Answer to fourth interrogatory. I have read these letters. I had conversations with Liberty Bigelow about the time those two letters are dated about the business matters referred to in those letters, and know that the loan and indebtedness was a loan made by Daniel Lawrence to the firm of F. Parmelee & Co., in the year 1856, on Garrett Block, in Chicago.

5. Answer to fifth interrogatory. This is a copy of the deed spoken of. (The witness here produced the instrument marked Exhibit C, with my initials, Com'r R. T. P., Jr.,) and this is a copy of the agreement spoken of. (The witness here produced the instrument marked Exhibit
292 D, with my initials, Com'r R. T. P., Jr.) I have read these two copies, and I know that the original deeds were executed and delivered by the parties who purport in these copies to have executed them. I know this from the statements of all the parties to them, (except the wives of the parties.) The purpose of these two documents was this: Daniel Lawrence had agreed to loan to F. Parmelee & Co. fifty thousand dollars on the security of Garrett Block, described in these deeds; and this firm had agreed to secure this loan to them by a mortgage on this property. Daniel Lawrence prefered to have the mortgage made in the customary way by a single instrument, but the firm of F. Parmelee & Co., or rather Liberty Bigelow, who made the negotiation on their behalf, preferred to give the security in a different way, by two deeds, and accordingly the two deeds were made, of which the above papers are copies. Mr. Bigelow assured Daniel Lawrence several times in my presence that these two deeds were of the
293 nature of a mortgage and nothing else. This was about the time the deeds were made, both before and after they were made. Soon after I arrived at Chicago, in December, 1856, Messrs. Gage and Parmelee explained the whole transaction to me in detail, and they always spoke of these two instruments as a mortgage made to Daniel Lawrence to secure the loan of fifty thousand dollars which he had made to them.

Answer to the sixth interrogatory. I know that the said Bigelow, Gage, Parmelee, and Johnson are indebted unto the said Daniel Lawrence in the sum of fifty thousand dollars and interest for cash advanced by him to them as a loan. This loan was made in the fall of the year 1856. I cannot remember exactly the date of it, but should say it was about the middle of September of that year. I know these facts from conversations which I have had with each and all of the above-named parties, both before and since the loan was made. Matters connected with this loan were very frequently discussed by Bigelow,
294 Gage, and Parmelee, in my presence, at Chicago, in the year 1857, and with me, by Bigelow and Daniel Lawrence, in the autumn of 1856, and ever since. Bigelow and I have talked this whole matter over a great deal during the last few months. Since April, 1861, Daniel Lawrence has often made application to F. Parmelee & Co., to have this debt paid off. In the autumn of that year, and frequently since then, I have heard Daniel Lawrence request Liberty Bigelow to pay this debt,

and he has always replied that it should be paid. I have often myself called on Bigelow on my fathers' account, to have this debt paid, and his reply has often been that the money should be paid every cent of it—principal and interest. Mr. Bigelow stated to me that Daniel Lawrence had also demanded payment of said Gage & Parmelee and himself, at Chicago, just before this suit was brought.

Answer to the seventh interrogatory. F. Parmelee & Co. did
295 give to Daniel Lawrence real estate security to secure the payment of the said indebtedness. This security consisted of a mortgage of Garrett Block, in Chicago, the same in which my office and that of F. Parmelee & Co. was situated. This security was effected by writings given by Parmelee & Co. to Daniel Lawrence, and by him to them. These writings I have heard always called a mortgage by said Bigelow, Gage, Parmelee, Johnson, also by said Lawrence, in numerous conversations with each of them. They all said that the whole agreement was contained in these writings, of which I have produced copies, and in a bond.

8. Answer to eighth interrogatory. I have heard said Gage, Parmelee, Johnson, and Bigelow, all of them, say time and again, that they had borrowed fifty thousand dollars of said Daniel Lawrence in the many conversations which we had together about the matter. They borrowed this money to enable them to build, and they used it in building the stores and tenements of Garrett's Block. I know this from their
296 statements to me.

9. Answer to the ninth interrogatory. Before this suit was brought, and while I was in Chicago, I often heard Gage, Johnson, Parmelee, and Bigelow, and more frequently said Parmelee & Bigelow, discuss how much money they were going to make by building on Garrett Block, and in these conversations they always spoke of themselves as *among* the said premises, and Daniel Lawrence was always spoken of as having a mortgage on the premises for fifty thousand dollars. I have often heard Bigelow, Gage, and Parmelee say that this mortgage of Daniel Lawrence was one of the best secured and safest mortgages in the West.

10. Answer to tenth interrogatory. I have neither of the letters referred to in this interrogatory.

The following are the answers of the witness Samuel C. Lawrence to the cross-interrogatories on the part of Liberty Bigelow, David
297 A. Gage, Franklin Parmelee, Walter S. Johnson, Eliza M. Gage, Electa M. Johnson, Harriet A. Bigelow, impleaded with Adaline Parmelee, deceased:

Answer to the first cross-interrogatory. My age is thirty-one; occupation is manufacturing. I carry on my business in Boston. I have known Daniel Lawrence from my childhood. He resides in Medford, and he has been engaged in manufacturing for some years back, and is so engaged now. He has been a manufacturer at Medford for forty years.

Answer to the second cross-interrogatory. Daniel Lawrence is my father.

Answer to the third cross-interrogatory. Liberty Bigelow married the half-sister of Daniel Lawrence.

Answer to the fourth cross-interrogatory. Daniel Lawrence is a man of some means; he has been accustomed to loan money occasionally, but not often. He has had a few money transactions with parties
298 in the city of Chicago, but not elsewhere, so far as I know, at

the West. They were all loans secured by mortgages, so far as I know.

Answer to the fifth cross-interrogatory. His reason was that he would get ten per cent. for his money in Chicago, and only six per cent. in Massachusetts.

Answer to the sixth cross-interrogatory. I was interested in the business of loaning money and discounting paper in Chicago. I began at the close of 1856, and ceased in the spring of 1858. Daniel Lawrence did assist in furnishing part of the means for said business.

Answer to the seventh cross-interrogatory. Yes.

Answer to the eighth cross-interrogatory. I know that Daniel Lawrence made this loan of fifty thousand dollars to F. Parmelee & Co. in the year 1856, from having heard all the five parties to it speak of it frequently. I was not present when the arrangement was made
299 for this loan. But I was present at many preliminary discussions between Liberty Bigelow and Daniel Lawrence. The rate of interest agreed upon was ten per cent. There was also to be a bond for certain notes.

Answer to the ninth cross-interrogatory. I never have seen such a bond in the possession or under the control of Daniel Lawrence, nor anywhere at all. I have this instrument, which purports to be a copy of a bond recorded at Chicago. (The witness here produced the document marked by me Exhibit E, with my initials, Com'r P. T. P., Jr.) The reason why I have not the original bond in my possession and did have the other papers, which I have already produced, is this: That the original bond has not been in Daniel Lawrence's possession so far as I know, and when I requested him to give me such bond he replied that it had never been delivered to him, but that Liberty Bigelow had given him this copy of it. I have requested Daniel Lawrence to give me
300 the original bond, as desired in this cross-interogatory, and he was unable to do so for the reason just given.

10 Answer to the tenth cross-interogatory. This interrogatory has just been fully answered.

Answer to the eleventh cross-interogatory. I received all the papers which I have produced in this deposition from Daniel Lawrence, at my office in Boston, this forenoon. I asked him to bring them to me from Medford, to annex to this deposition. I do not know what is the amount which has been received by Daniel Lawrence of the defendants on account of this fifty thousand dollars. I know that payments have been made, but do not know their amount. I know that most of them were received as interest on this loan, but don't know that they all were so. But Bigelow has stated to me within two months that no part of the principal had been paid.

SAMUEL C. LAWRENCE.

301 COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

I, Robert Treat Paine, (junior of the name,) of the county of Suffolk, and State of Massachusetts, a commissioner duly appointed to take the deposition of the said Samuel C. Lawrence, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Samuel C. Lawrence, as a witness in the suit between the said Liberty Bigelow, David A. Gage, and Franklin Parmelee, plaintiffs, and Daniel Lawrence, defendant, and in the cross-bill thereto between Daniel Lawrence, plaintiff, and Liberty Bigelow, David A. Gage, Franklin Parmelee, Walter S. Johnson, Eliza M. Gage, Electa M. Johnson, Harriet A. Bigelow, im-

pleaded with Adaline Parmelee, deceased, defendants, he was duly sworn by me as such commissioner, to testify the truth in relation to the matters in controversy between the said Liberty Bigelow, David A. Gage, and Franklin Parmelee, plaintiffs, and Daniel Lawrence,
302 defendant, and also between the said Daniel Lawrence, plaintiff, and Liberty Bigelow, David A. Gage, Franklin Parmelee, Walter S. Johnson, Eliza M. Gage, Electa M. Johnson, Harriet A. Bigelow, impleaded with Adaline Parmelee, deceased, defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at my office, in the city of Boston, and county of Suffolk, and State of Massachusetts, on the fifth day of April, A. D. 1864; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent Samuel C. Lawrence before me, the oath being administered by me as such commissioner at the place and on the day and year last aforesaid.

ROBERT TREAT PAINE, JR.,
Commissioner.

Exhibit "A," R. T. P., Jr.

54 KELLEY STREET, BOSTON, *Oct.* 10, '61.

DANIEL LAWRENCE, Esq.

303 D'R SIR: I expected to see you yesterday at our house to tea, but being disappointed take this opportunity to write you. I rec'd a letter from Parmelee yesterday, scolding a little because I had not sent him on your proposal for the future rate of interest on your loan to us, and said when I did so he would send the d'f t. I accordingly wrote him you wanted him to pay you 5 or $10,000 this fall, and the balance might lay at 10% per annum, and that you said if he could do better you should be glad to have him. I shall get his reply by Monday or Tuesday. I told him also I thought you would give him ample time if he wished, to raise the money of other parties.

Y'rs, truly,

L. BIGELOW.

"B"

Exhibit "B," R. T. P., Jr.

OFFICE, 54 KELLEY STREET, BOSTON, *Nov.* 25, 1861.

DANIEL LAWRENCE, Esq.

D'R SIR: I received a letter from F. Parmelee & Co. this a. m., stating that he declined your proposition to pay 9% interest
304 on the am't y'r due. I am sorry that such is the fact; and that being the case, I think I had better go out the last of this week or the first of next. Please call in the first time you are in town; it is a source of great trouble to me.

Yours, truly,

L. BIGELOW.

Exhibit "C," Com'r R. T. P., Jr.

Liberty Bigelow et al. to D. Lawrence.

This indenture, made this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Liberty Bigelow and Harriet A. Bigelow, his wife, of the city of Boston, Massachusetts, Walter S. Johnson and Electa M. Johnson, his wife, David A. Gage and Eliza M. Gage, his wife, and Franklin Parmelee and Adaline Parmelee, his wife, of the city of Chicago, county of Cook, and State of Illinois, parties of the first part, and Daniel Lawrence, of Medford, Middlesex County, and State of Massachusetts, witnesseth that the said parties of the first part, for and in consideration of the sum of
305 fifty thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all the following-described lots, pieces, or parcels of land, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit:

Lots number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot numbor fourteen, (14,) in said block thirteen, (13;) and also that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one
306 hundred and fifty (150) feet, to the place of beginning; the above-described property being subject in this grant to the rents and conditions provided for, and imposed in and by, a certain lease made by James Crow and Thomas Crow, parties of the first part, and Theodorus Doty and Daniel Andrews, parties of the second part therein, and bearing date the tenth day of October, eighteen hundred and fifty-three, and filed for record in the recorder's office of the county of Cook aforesaid, November twenty-eighth, and recorded in book eighty-two, page six hundred and eighty-two, and also to the payments to be made in and by certain articles of agreements bearing date the first day of August, eighteen hundred and fifty-five, between Frederick F. Flagler, of the first part, and Franklin Parmelee of the second part therein, for the sale by said Flagler to said Parmelee of part of the above-described premises, and filed for record in the office of said recorder on the nineteenth day of September, eighteen hundred and fifty-five, and recorded
307 in book of deeds ninety-nine, page three hundred and thirty-one, which said lease and articles of agreement, and the money thereby required to be paid, are to be kept, performed, and paid by the said Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, or their heirs, administrators, together with all and singular the buildings improvements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversioners, remainder and remainders, and all the estate, right, title, interest, claim, or demand whatsoever, of the said parties of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described,

with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee, parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said party
308 of the second part, his heirs and assigns, that the said above-described premises are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and encumbrances of what kind soever, except the said lease and articles of agreement above mentioned; and the above-bargained premises in the quiet and peacable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will warrant and (forever) defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Witness: W'M W. STEWART, *as to*—
LIBERTY BIGELOW. [SEAL.]
" W'M W. STEWART,
DAVID A. GAGE. [SEAL.]
" J. F. WHITE,
ELIZA M. GAGE. [SEAL.]
" W'M W. STEWART, *as to*—
WALTER S. JOHNSON. [SEAL.]
" ROLLIN V. HURLBUT,
ELECTA M. JOHNSON. [SEAL.]
" W'M W. STEWART,
FRANKLIN PARMELEE. [SEAL.]
" ALEXANDER PARKER,
ADALINE PARMELEE. [SEAL.]

309 STATE OF ILLINOIS, *Cook County, ss:*

I, W'm W. Stewart, a notary public in said county, in the State aforesaid, do hereby certify that Liberty Bigelow, David A. Gage, Walter S. Johnson, and Franklin Parmelee, who are personally known by me to be the same persons whose names are subscribed to the annexed indenture of writing, appeared before me this day in person, and acknowledged that they had signed, sealed, and delivered, the said instrument of writing as their free act and deed for the uses and purposes therein mentioned.

Given under my hand and notarial seal this fourteenth day of October, A. D. 1856.

[SEAL.] W'M W. STEWART,
Notary Public.

No. 76703. Filed for record October 16th, 1856, and recorded in book 123 of deeds, at page 128.

310 STATE OF ILLINOIS, *Cook County, ss:*

I, William L. Church, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my office on the sixteenth day of October, A. D. 1856, and recorded in book

No. of , on page 123; the parties to the same being Liberty Bigelow, of the first part, and D. Lawrence, of the second part.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at Chicago this 21st day of March, A. D. 1864.

[SEAL.] W'M L. CHURCH,
Clerk of the Circuit Court and Ex-officio Recorder of Cook County.

[5-c't rev. stamp cancelled.]

311 *Exhibit "D," R. T. P., Jr., Com'r.*

Daniel Lawrence to Liberty Bigelow et al.

Articles of agreement made this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Daniel Lawrence, of Medford, Middlesex County, and State of Massachusetts, party of the first part, and Liberty Bigelow, of Boston and State aforesaid, and Walter S. Johnson, David A. Gage, and Franklin Parmelee, of the city of Chicago, county of Cook, and State of Illinois, parties of the second part, witnesseth:

That, upon the parties of the second part paying to the party of the first part the sum of fifty thousand dollars, and interest thereon as hereinafter stated, the party of the first part hereby covenants and agrees to sell and, by a good and sufficient deed, to convey and assure to the parties of the second part, free and clear of all incumbrances, all those pieces and parcels of land, and the buildings thereon, and appurtenances thereto belonging, situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit: Lots
312 number fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen; and also all that part of lot number fourteen, (14,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet, to the place of beginning, being the same pieces or parcels of land conveyed by the said parties of the second part to the party of the first part by deed bearing even date herewith. And the said parties of the second part hereby covenant and agree, to and with the said party of the first part, to pay to the said party of the first part for said pieces or parcels of land the sum of fifty thousand dollars, with interest thereon at the rate of ten per centum per annum, which said sum of fifty thousand dollars is to be paid at the office of F. Parmelee & Co., in
313 the city of Chicago, in five equal annual instalments from the first day of October, in the year eighteen hundred and fifty-six; that is to say, ten thousand dollars to be paid on the first day of October, eighteen hundred and fifty-seven, and the same amount on the first days of October in each year thereafter, until said sum of fifty thousand dollars be paid. But the parties of the second part shall be, and are hereby, authorized to pay said sum of money in larger instalments or payments at the times above specified, or sooner, if they, the said parties of the second part, shall desire or choose so to do. Interest on said sum of fifty thousand dollars, at the rate aforesaid, shall commence on the first day of October, eighteen hundred and fifty-six, and is to be paid at the Tremont Bank, in the city of Boston, semi-annu-

ally from said first days of October, on all sums remaining unpaid of said fifty thousand dollars. The said parties of the second part are to have the possession and use, and recover the rents and profits to
314 their own use and benefit, of all the above-described premises during all the time above designated for the payment of said fifty thousand dollars. And the said parties of the second part are to complete the erection of the buildings now in the course of erection upon said premises, and pay all taxes and assessments levied or imposed thereon during said time; and also to pay all rent or rents payable by virtue of a certain lease bearing date the tenth day of October, A. D. 1853, made by James Crow & Thomas Crow to Theodorus Dotey and Daniel Andrews during said time; also to payments which may accrue during said time under and virtue of certain articles of agreement bearing date the first day of August, A. D. 1855, between Frederick T. Flagler, party of the first part, and Franklin Parmelee aforesaid, party of the second part therein. The parties of the second part are to assign to the party of the first part all policies of insurance upon the buildings on said premises now issued, and are to keep said premises well and sufficiently insured during said time for the use and benefit of
315 the said party of the first part. And when said sum of fifty thousand dollars, with the interest aforesaid, shall be paid by the parties of the second part, or their heirs, assigns, executors, or administrators, to the said party of the first part, or his heirs, assigns, executors, or administrators, the said party of the first part hereby covenants to and with the parties of the second part, their heirs, assigns, executors, or administrators, to assign to the parties of the second part all such polices of insurance as he may have acquired upon said premises, and also to convey the said above-described premises, with the appurtenances and buildings aforesaid, to the parties of the second part. It is further mutually covenanted and agreed that the covenants and agreements herein contained shall be obligatory upon the heirs, executors, administrators, or assigns of the party of the first part, and the parties of the second part hereto, respectively.

Witness our hands and seals the day and year above written.

DANIEL LAWRENCE. [SEAL.]
LIBERTY BIGELOW. [SEAL.]
316 WALTER S. JOHNSON. [SEAL.]
DAVID A. GAGE. [SEAL.]
FRANKLIN PARMELEE. [SEAL.]

J. P. WEBSTER *to signature of D. Lawrence.*

SEPTEMBER 23RD, 1856.

SUFFOLK, *ss:*

Then personally appeared before me Daniel Lawrence, and acknowledged the foregoing instrument to be his free act and deed.

J. P. WELCH,
Justice of the Peace.

No. 76729. Filed for record October 17th, 1856, and recorded in book 124 of deeds, at page 71.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my

office on the seventeenth day of October, A. D. 1856, and recorded in book No. 124 of deeds, on page No. 71, the parties to the same being Daniel Lawrence, of the first part, and Liberty Bigelow, of the second part.

317 In testimony whereof I have hereunto set my hand and affixed { Seal & 5-ct. rev. stamp cancelled. } the seal of our said court, at Chicago, this 21st day of March, A. D. 1864.

W'M L. CHURCH,
Clerk of the Circuit Court and Ex-officio Recorder of Cook County.

Exhibit "E," R. T. P., Jr., Com'r.

Know all men by these presents that we, Liberty Bigelow, of the city of Boston, and David A. Gage, Walter S. Johnson, and Franklin Parmelee, of the city of Chicago, county of Cook, and State of Illinois, are held and firmly bound unto Daniel Lawrence, of Medford, Middlesex County, and State of Massachusetts, in the penal sum of three thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, or administrators, jointly and severally, firmly by these presents, sealed with our seals this fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-six.

The condition of this obligation is such that, the above-named
318 obligors, or either of them, shall, on the first day of October, one thousand eight hundred and fifty-seven, deliver at the Tremont Bank, Boston, for the said obligee, the notes of the said obligors, payable in six and twelve months at said bank, for such sum as the interest at two per centum per annum shall amount to on all the moneys remaining unpaid on said first day of October upon certain articles bearing even date herewith, made by said obligee to and with said obligors for the conveyance of certain real estate by said obligee to said obligors as therein described, and shall, on the first day of October, in each year after eighteen hundred and fifty-seven, deliver also at said bank the notes of said obligors, or the survivor or survivors of them, for the interest at two per centum per annum on such sums as shall remain unpaid on said articles, until the whole sum of fifty thousand dollars mentioned in said articles be paid, and shall make said notes payable at said bank to said obligee in six and twelve months from the time of so making the same, and shall pay or cause to be paid all such notes so
319 given, then this obligation to be void and of no effect; otherwise to remain in full force and effect.

In presence of—

W'M W. STEWART.	LIBERTY BIGELOW.	[SEAL.]
W'M W. STEWART.	DAVID A. GAGE.	[SEAL.]
W'M W. STEWART.	WALTER S. JOHNSON.	[SEAL.]
W'M W. STEWART.	FRANKLIN PARMELEE.	[SEAL.]

STATE OF ILLINOIS, *Cook County, ss:*

I, W'm W. Stewart, a notary public in said county, in the State aforesaid, do hereby certify that Liberty Bigelow, David A. Gage, Walter S. Johnson, and Franklin Parmelee, who are personally known by me to be the same persons whose names are subscribed to the annexed bond to Daniel Lawrence, appeared before me this day in person and acknowledged that they had signed, sealed, and delivered the said in-

strument of writing as his free act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal this seventeenth day of October, A. D. 1856.

[L. S.] W'M W. STEWART,
Notary Public.

320 STATE OF ILLINOIS, *County of Cook, ss:*

I, Louis D. Hoard, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed writing contains a true and correct copy of a certain instrument filed in my office on the seventeenth day of October, A. D. 1856, and numbered 76728, the parties to the same being L. Bigelow, D. A. Gage, W. S. Johnson & F. Parmelee, of the first part, and Daniel Lawrence, of the second part.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Chicago, in said county, this seventeenth day of October, A. D. 1856.

[SEAL.] L. D. HOARD, *Clerk.*

Afterwards, to wit, on the sixteenth day of May, 1864, the following order was entered of record, viz:

LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee *vs.* DANIEL LAWRENCE. } Bill.

321 And now come the parties to this cause, and by their solicitors, and it is ordered by the court without objection that the parties to said cause be, and they are hereby, required to close proofs, to be taken in said cause on either side and which have not yet been fully taken, on or before the twentieth day of June next.

And afterwards, to wit, on the nineteenth day of September, in the year last aforesaid, came David A. Gage, and filed in the office of the clerk of said court his certain affidavit in the words and figures following, to wit:

Superior court of Chicago, in chancery.

LIBERTY BIGELOW, DAVID A. GAGE, & Franklin Parmelee *vs.* DANIEL LAWRENCE. } Original bill.

322 DANIEL LAWRENCE *vs.* LIBERTY BIGELOW, DAVID A. GAGE, Franklin Parmelee, Walter S. Johnson, & others. } Cross-bill.

STATE OF ILLINOIS, *County of Cook, ss:*

David A. Gage, being duly sworn, deposes and says that he is one of the plaintiffs in the original bill and one of the defendants to the cross-bill in this cause.

And deponent further says that since the filing of the said original

bill, and since the filing of all the answers to the said cross-bill, and on the 12th day of August last past, the above-named Liberty Bigelow, as this deponent is informed and verily believes to be true, settled with the said Daniel Lawrence of and concerning all the money due or claimed to be due to him, said Lawrence, upon the articles of agreement set
323 forth in said original and cross bills and thereby covenanted to be paid by said Bigelow, Parmelee, Johnson, and this deponent, jointly, to him, said Lawrence; and upon such settlement the said Bigelow paid to said Lawrence the sum of twenty-two thousand five hundred and fifty-seven dollars; and the said Lawrence thereupon, in consideration of said sum so paid him by said Bigelow as aforesaid, under his hand & seal executed and delivered to said Liberty Bigelow a release, whereby he, said Lawrence, released and discharged the said Bigelow, his property, and estate, from all claims on account of said articles of agreement, which said release is recorded in the recorder's office of Cook County, in book 285 of deeds, page 93, and a copy of which is hereto annexed, to which reference is hereby made as a part hereof, and which are the same identical articles of agreement, and the moneys therein mentioned the same identical moneys mentioned and described and sought to be recovered in and by the said cross-bill.

324 And this deponent further says that said settlement, payment, and release aforesaid were made without the knowledge or consent of this deponent, and, as he is informed and believes, said release was made without the knowledge or consent of said Walter S. Johnson or Franklin Parmelee.

Wherefore this deponent prays that leave may be granted to this deponent and his coplaintiffs by this honorable court to file a bill supplementary to said original bill, setting up said matters, and praying for the proper relief, and also leave given to this deponent and his codefendants in said cross-bill, to file supplementary answers to said cross-bill; also setting up said matters as a defence to the further prosecution of said cross-bill, and that said answers may be filed seperately.

D. A. GAGE.

Subscribed and sworn to this 13th day of September, A. D. 1864, before me.

GEO. W. FULLER,
Notary Public.

Subscribed to and sworn before me this 19th day of September, A. D. 1864.

[L. S.] OBADIAH JACKSON, JR.

325 Received, Boston, August 12th, 1864, twenty-two thousand five hundred and fifty-seven dollars, of Liberty Bigelow, in full payment of his portion of all money due me on articles of agreement between myself, him, (said B.,) F. Parmelee, D. A. Gage, and W. S. Johnson, dated Sept. 15th, 1856, and recorded in the recorder's office of Cook Co., Ill's, Octo. 17th, same year, in book 171 of deeds, page 71; and I release and discharge said Bigelow, his property and estate, from all claims on account of the same.

If the property mentioned in the above articles has to be sold under any order of the court at Chicago, the interest of said Bigelow in it is to be protected according to this settlement. Nothing herein contained shall in any wise affect my rights or demand against said Parmelee, Gage, or Johnson, or their interest in said property.

(Stamp.) DANIEL LAWRENCE. [SEAL.]

Recorded Aug. 16th, 1864, book 285 of deeds, page 93.

326 And afterwards, to wit, on the nineteenth day of September, 1864, the following order was entered of record, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee
vs.
DANIEL LAWRENCE.
} Bill.

And now at this day again come the above-named complainants by McAllister, Jewett and Jackson, their solicitors; and on their motion, no objection being made, it is ordered by the court that leave be, and is hereby, given to the complainants to file herein their bill of complaint supplementary to their original bill of complaint filed in this cause, and also their answers supplementary to their original answers to the cross-bill of complaint filed by the said defendant in this cause; and that said answers be joint or several; said supplementary bill and answer are to contain and set forth only the matters stated and contained in the affidavit this day filed herein, which supplementary bill and answer
327 are to be filed herein by Monday, September 26th, instant.

And afterwards, to wit, on the twenty-second day of September, in the year last aforesaid, came Walter S. Johnson, and filed in the office of the clerk of said superior court of Chicago his certain supplementary answer to the cross-bill of Daniel Lawrence; which said supplementary answer is in the words and figures following, to wit:

In chancery, before the superior court of Chicago.

The supplementary answer of Walter S. Johnson, on of the defendants, to the bill of complaint of Daniel Lawrence against Liberty Bigelow, Harriet A. Bigelow, David A. Gage and Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, and Franklin Parmelee.

This defendant, for supplementary answer unto said bill of complaint, says that the articles of agreement between the said complain-
328 ant, as party of the first part therein, and Liberty Bigelow, David A. Gage, Franklin Parmelee, and this defendant, as party of the second part, bearing date the 15th day of September, 1856, and described and referred to in said bill of complaint, designated as Exhibit "E," appended to said bill, whereby the said parties of the second part, amongst other things, jointly covenanted and agreed, under their respective hands and seals, to and with the said complainant, to pay him the sum of fifty thousand dollars with interest at the times and places in said articles mentioned, constitute the sole and principal indebtedness set forth in said bill of complaint, for the satisfaction of which said sum and interest the said complainant has exhibited his said bill of complaint.

And this defendant further says that, since the time of filing the answer of the defendants to said bill of complaint, and the setting forth therein, as a defence to the relief prayed in and by the said bill, the corrupt and usurious character of the transaction out of which
329 the said articles arose, and on the 12th day of August last past, at Boston, the said defendant, Liberty Bigelow, settled with the said complainant of and concerning the monies due the said complainant, for principal and interest upon said articles of agreement; and upon such settlement the said Bigelow paid to the said complainant, who ac-

cepted and received the same in full payment of all money due him from said Bigelow on said articles, the sum of twenty-two thousand five hundred and fifty-seven dollars; and in consideration of such payment, as aforesaid, the said complainant then and there signed and sealed and delivered to said Bigelow an instrument in writing, whereby the said complainant acknowledged that he had received the said sum of money from said Bigelow in full payment of all the money due him from said Bigelow on said articles of agreement; and whereby also the said complainant released and discharged the said Bigelow, his property and estate, from all claims on account of said articles of agreement;
330 and whereby also the said complainant covenanted and agreed to and with said Bigelow that, if the property mentioned in said articles had to be sold, the interest of said Bigelow in the same should be protected according to that settlement.

And this defendant further says that himself and said David A. Gage were, at the time of the making said articles, cotenants with the said Bigelow in the said property described in said articles, and the said release was made by the said complainant, and accepted and received by the said Bigelow, without the knowledge or consent of this defendant; whereof this defendant insists that such release operates to discharge this defendant and the said property from all claims on account of said articles of agreement.

And this defendant prays the full benefit of said matters as a bar to the further prosecution of said bill, and the relief therein prayed.

All of which several matters and things this defendant is ready to maintain and prove, as this honorable court shall direct; and
331 prays to be hence dismissed with his reasonable costs, &c.

WALTER S. JOHNSON.

GOODRICH, FARWELL AND SMITH,
Sol's for said Def't.

And afterwards, to wit, on the twenty-fourth day of September, in the year last aforesaid, came Franklin Parmelee, one of the said parties, and filed in the office of the clerk of said court his certain supplementary answer to the cross-bill of Daniel Lawrence in the words and figures following, to wit:

In chancery, before the superior court of Chicago.

The supplementary answer of Franklin Parmelee, one of the defendants, to the bill of complaint of Daniel Lawrence against Liberty Bigelow, Harriet A. Bigelow, David A. Gage & Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, & Franklin Parmelee.

332 This defendant, for supplementary answer unto said bill of complaint, says that the articles of agreement between the said complainant, as party of the first part therein, and Liberty Bigelow, David A. Gage, Walter S. Johnson, and this defendant, as party of the second part, bearing date the 15th day of September, 1856, and described and referred to in said bill of complaint designated as "Exhibit E," appended to said bill, whereby the said parties of the second part, amongst other things, jointly covenanted and agreed, under their respective hands and seals, to and with the said complainant to pay him the sum of fifty thousand dollars, with interest, at the times and places in said articles mentioned, constitute the sole and principle indebtedness set forth in said bill of complaint, for the satisfaction of which said sum and interest the said complainant has exhibited his said bill of complaint.

And this defendant further says that, since the time of filing the answer of the defendants to said bill of complaint, and the setting forth therein, as a defence to the relief prayed in and by the said bill,
333 the corrupt and usurious character of the transaction out of which the said articles arose, and on the 12th day of August last past, at Boston, the said defendant, Liberty Bigelow, settled with the said complainant of and concerning the moneys due said complainant for principal and interest upon said articles of agreement; and upon such settlement the said Bigelow paid to the said complainant, who accepted and received the same in full payment of all money due him from said Bigelow on said articles, the sum of twenty-two thousand five hundred and fifty-seven dollars; and, in consideration of such payment as aforesaid. the said complainant then and there signed and sealed and delivered to said Bigelow an instrument in writing, whereby the said complainant acknowledged that he had received the said sum of money from said Bigelow in full payment of all the money due him from said Bigelow on said articles of agreement; and whereby also the said complainant released and discharged the said Bigelow, his property and estate, from
334 all claims on account of said articles of agreement; whereby also the said complainant covenanted and agreed to and with said Bigelow that, if the property mentioned in said articles had to be sold, the interest of said Bigelow in the same should be protected according to that settlement.

And this defendant further says that himself and said David A. Gage were, at the time of the making said articles, ever since have been, and still are, cotenants with the said Bigelow in the said property described in said articles, and the said release was made by the said complainant, and accepted and received by the said Bigelow, without the knowledge or consent of this defendant; wherefore this defendant insists that such release operates to discharge this defendant and the said property from all claims on account of said articles of agreement.

And this defendant prays the full benefit of said matters as a bar to the further prosecution of said bill, and the relief therein prayed.

All of which several matters and things this defendant is ready
335 and willing to maintain and prove, as this honorable court shall direct; and prays to be hence dismissed with reasonable costs, &c.

FRANK PARMELEE.

McALLISTER, JEWETT & JACKSON,
Sol'r's for Def't.

And afterwards, to wit, on the same day and year last aforesaid, came Liberty Bigelow, one of said parties, and filed in the office of the clerk of said court his certain supplementary answer to the cross-bill of Daniel Lawrence in the words and figures following, to wit:

In chancery, before the superior court of Chicago.

The supplementary answer of Liberty Bigelow, one of the defendants, to the bill of complaint of Daniel Lawrence, complainant, against Liberty Bigelow, Harriet A. Bigelow, David A. Gage, Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, & Franklin Parmelee.

This defendant, for supplementary unto the said bill of com-
336 plaint, says that the articles of agreement between said complainant, as party of the first part therein, and this defendant, David A. Gage, Franklin Parmelee, & Walter S. Johnson, as parties of the

second part therein, bearing date the 15th day of September, 1856, and described and referred to in said bill of complaint is "Exhibit E," whereby the said parties of the second part, under their respective hands and seals, jointly covenanted and agreed to and with the said complainant to pay him the sum of fifty thousand dollars, and interest thereon at the times and at the places therein mentioned, are and constitute the sole and only ground and cause of the claim of the said complainant, and the principal debt sought to be recovered in and by the said bill of complaint.

And this defendant, further answering, says that all the moneys payable in and by the said articles of agreement having become due and payable by the terms of said articles of agreement, this defendant and said complainant, since the time of the filing of the answer of this defendant to the said bill of complaint, and on the 12th day of
337 August last past, at Boston, in the State of Massachusetts, settled of & concerning the moneys, and all and singular thereof, claimed to be legally due to the said complainant from this defendant upon said articles of agreement, and upon such settlement this defendant paid to the said complainant the sum of twenty-two thousand five hundred & fifty-seven dollars, and which the said complainant accepted & received from this defendant in full payment of all the moneys due him from this defendant on said articles of agreement, and which this defendant avers was all, and is all, that was then and there legally & justly due to the said complainant, after deducting the twenty-seven thousand dollars already paid him on said articles, and the amount which was corruptly & usuriously included in said transactions, and the amount which was thereby forfeited.

And this defendant further saith that the said complainant, in consideration of the payment to him by this defendant of the aforesaid sum on such settlement, as aforesaid, then and there, by a release
338 in writing, signed and sealed by the said complainants, and delivered to this defendant, acknowledged that he had received the said sum of money of this defendant in full payment of all the money due from this defendant to said complainant on said articles of agreement; and by the said release in writing, signed, sealed, and delivered by the said complainant to this defendant, the said complainant released and discharged this defendant, his property & estate, from all claims on account of said articles of agreement; and in and by the same instrument the said complainant covenanted and agreed to and with this defendant that, if the property mentioned in said articles of agreement had to be sold under any order of the court at Chicago, the interest of this defendant in the same should be protected according to that settlement, a copy of which said release is hereto annexed, and which this defendant prays may be taken as a part of his answer.

And this defendant further says that, not waiving any matters of defence set forth in his former answer to said bill of complaint, he
339 insists on said payment and the said release and discharge as a full & complete bar to the further prosecution of said bill of complaint, and to the relief therein prayed, and asks that he may have the full benefit of the same in this his supplementary answer, and that this his answer may give him the same benefit of said matters as a bar to the relief prayed in and by said bill of complaint as if the said matters had been specially pleaded in bar to such relief.

All which matters and things this defendant is ready & willing to aver, maintain, and prove, as this honorable court shall direct; and

humbly prays to be hence dismissed with his reasonable costs & charges, &c.

LIBERTY BIGELOW.

McALLISTER, JEWETT & JACKSON,
Sol. for Def'ts.

And on the same day and year last aforesaid came David A. Gage, and filed in the office of said clerk his certain supplementary answer to the cross-bill of Daniel Lawrence in the words & figures following, to wit:

In chancery, before the superior court of Chicago.

340 The supplimentary answer of David A. Gage, one of the defendants, to the bill of complaint of Daniel Lawrence, complainant, against Liberty Bigelow, Harriet A. Bigelow, David A. Gage, Eliza M. Gage, Walter S. Johnson, Electa M. Johnson, & Franklin Parmelee.

This defendant, for supplimentary answer unto the said bill of complaint, says that the articles of agreement between the said complainant, a party of the first part therein, and Liberty Bigelow, Franklin Parmelee, Walter S. Johnson, and this defendant, as the parties of the second part therein, bearing date the 15th day of September, 1856, and described and referred to in said bill of complaint, and designated as "Exhibit E," appended to said bill, whereby the said parties of the second part covenanted and agreed, under their respective hands and seals, jointly to and with the said complainant, to pay him the sum of fifty thousand dollars, & interest mentioned in said bill of complaint, at the time & places in said articles mentioned, constitute the sole and principal indebtedness set forth and alleged in said bill of complaint, for the payment of which the said complainant demands
341 the sale of the premises in said articles mentioned.

And this defendant further says that, since the time of the filing of the answers of this defendant and his codefendants to said bill of complaint, in which is set out the usurious character of the transaction out which said articles of agreement arose, and on the 12th day of August last past, in the city of Boston, State of Massachusetts, the said defendant, Liberty Bigelow, and the said complainant, settled together of and concerning the moneys due said complainant from said Liberty Bigelow upon said articles of agreement; that upon such settlement as aforesaid the said Liberty Bigelow paid to the said complainant the full sum of twenty-two thousand five hundred and fifty-seven dollars, which the said complainant accepted and received from said Bigelow in full payment of all the money due said complainant from said Bigelow upon said articles of agreement, and which sum this defendant avers is all, considering the twenty-seven thousand dollars already paid to said complainant by the parties of the second part,
342 to said articles upon the same, and the usurious character of the transaction out of which said articles arose, which the said complainant is legally entitled to receive from said parties of the second part.

And this defendant further says that the said complainant at the time of receiving the said sum of money of said Bigelow, upon said settlement as above mentioned, and in consideration of the payment of the same, then & there signed, sealed, and delivered to the said Liberty Bigelow, without the knowledge or consent of this defendant, or of said

Johnson or Parmelee, an instrument in writing whereby he, the said complainant, acknowledged that he had received the sum of twenty-two thousand five hundred and fifty-seven dollars of Liberty Bigelow in full payment of his portion of all money due said complainant on said articles of agreement, and whereby the said complainant released and discharged the said Bigelow, his property and estate, from all claims on account of said articles of agreement, and whereby the said
343 complainant covenanted and agreed to and with the said Bigelow that, if the property mentioned in said articles had to be sold under any order of the court at Chicago, the interest of said Bigelow in it should be protected according to that settlement, as by said instrument in writing or a certified copy thereof, when produced, will more fully appear.

And this defendant insists that the effect of the said release and discharge of said Bigelow from all claims on account of said articles of agreement (which contains divers other joint covenants, besides that for the payment of said money) without the consent of the other joint covenantors, is a manifest alteration of said articles, and as material and destructive of the validity thereof as the erasure of said Bigelow's name and seal therefrom, and said articles thereby ceased to be binding on this defendant, and he is therefore fully discharged of all claim on account of said articles of agreement, and especially as to said money & interest.

And this defendant claims the benefit of all and singular said
344 matters under this answer, and that as fully and completely as if all such matters had been specially pleaded in bar of the relief prayed in and by said bill of complaint.

All which matters and things this defendant is ready and willing to aver, maintain, & prove, as this honorable court shall direct; and prays to be hence dismissed with his reasonable costs, &c., charges in this behalf.

D. A. GAGE.

McALLISTER, JEWETT & JACKSON, *Sol'rs for Def't.*

And afterwards, to wit, on the same day and year last aforesaid, came Liberty Bigelow, David A. Gage, and Franklin Parmelee, and filed in the office of the clerk of said court their certain supplemental bill; which said supplemental bill, with the exhibit thereto annexed, is in the words and figures following, to wit:

345 In the superior court of Chicago, in chancery.

STATE OF ILLINOIS, *County of Cook, ss:*

To the honorable judges of said superior court of Chicago, in chancery sitting:

Humbly complaining show unto your honors your orators, Liberty Bigelow, who is a resident of the city of Boston, in the State of Massachusetts, David A. Gage and Franklin Parmelee, who are residents of the city of Chicago, that heretofore, to wit, on the 4th day of August, A. D. 1863, they exhibited their bill of complaint against Daniel Lawrence, a resident of Medford, in said State of Massachusetts, representing, in and by said bill of complaint in said court, to your honors that said Daniel Lawrence, on the 15th day of September, A. D. 1856, made and entered into articles of agreement in writing with your orators and one Walter S. Johnson, under his hand and seal, and under the hands

and seals of your orators and said Johnson, in and by which said
346 articles of agreement the said Daniel Lawrence covenanted and agreed in substance that, upon the payment to him by your orators and said Johnson of the sum of fifty thousand dollars, and interest thereon, as in said articles stated, he, the said Lawrence, would sell and, by a good and sufficient deed, convey and assure to your orators and said Johnson, free and clear of all incumbrances, certain pieces and parcels of land, which are described in said articles and in said bill of complaint. & it is also alleged in said bill of complaint that your orators and said Johnson, in and by said articles of agreement, covenanted and agreed to and with said Daniel Lawrence to pay to said Lawrence, for said pieces or parcels of land, the sum of fifty thousand dollars, with interest thereon at the rate of ten per centum per annum, said sum of fifty thousand dollars to be paid at the office of F. Parmelee & Co., in the city of Chicago, in five equal annual instalments, from the first day of October, 1856, a copy of which articles of agreement is attached to said bill of complaint, marked "Exhibit A," and to
347 which your orators refer, and pray that the same may be taken as a part of this supplementary bill of complaint.

And your orators further show that, in and by said bill of complaint so exhibited to your honors as aforesaid, they represented that your orators and said Johnson were authorized by said articles of agreement to take possession of said premises, & receive the rents & profits thereof; that they did enter into the possession of the same; that they were ready and willing to pay said instalments as they became due, but that said Lawrence had waived such payment; that your orators had made valuable improvements on said premises; that said Johnson, on the 6th day of November, 1858, sold out and conveyed all of his interest in said premises to your orators; that your orators were ready and willing to pay said Lawrence said sum of money, and all interest due him, upon his conveying to them such title to said premises as he had agreed to convey; that said Lawrence had no such title, and had given out and threatened that he would eject and remove your orators from said
348 premises, as therein is particularly stated, and praying that said Daniel Lawrence, his agents, attorneys, and solicitors, might be restrained and enjoined by a writ of injunction, issued out of and under the seal of this honorable court, from instituting any suit or suits, or other proceedings at law, to recover the possession of the premises in the articles of agreement aforesaid between him and your orators and said Walter S. Johnson, and therein particularly described, and from in any manner disturbing or interfering with your orators' possession of said premises, or the possession of any party or parties, person or persons, holding any portion of said premises as tenants or otherwise under your orators, and from disturbing or interfering with receipts of your orators of the rent and income of said premises, or any part thereof, and from transferring or assigning the said articles of agreement so entered into by him with your orators and said Johnson, bearing date the 15th day of September, A. D. 1856, aforesaid, or disposing of, or attemping to dispose of, any interest which he may have in said premises,
349 or any part thereof, and from enforcing, or attempting to enforce, any forfeiture of said articles of agreement, or any payment of the *same* of money therein specified, and that the said defendant might, by the decree of this honorable court to be entered herein, be compelled and ordered to adjust and settle with your orators in some equitable manner the damages which your orators will sustain by reason of his failure & refusal to comply with the terms of his agreement aforesaid,

and that, until such settlement, your orators may be protected in the quiet and peacable possession of said premises as against the arts and doings of the said defendant, and all parties acting for or claiming through or under him, and that your orators might have such other and further or different relief as the nature of their case might require, and to justice and equity should appertain, as in and by said bill of complaint now remaining as of record in this honorable court, reference being thereunto , may and will appear.

350 And your orators further show unto your honors that the said defendant, being served with process of summons, appeared to the said bill and put in his answer thereto, to which your orators have filed their replication.

And your orators further show unto your honors, by way of supplement, that since their said bill was filed, and on or about the 12th day of August, A. D. 1864, to wit, at Boston, in the State of Massachusetts aforesaid, your orator, Liberty Bigelow, had a settlement with the said Daniel Lawrence of and concerning the moneys due to him, said Lawrence, upon said articles of agreement between him, said Lawrence, and your orators and said Walter S. Johnson, bearing date the 15th day of September, 1856, aforesaid, and uppon such settlement the said Liberty Bigelow paid to said Lawrence the sum of twenty-two thousand five hundred and fifty-seven dollars, and he, the said Lawrence, accepted and received the same in full payment & satisfaction of all the money

351 due him from said Bigelow on said articles of agreement; and the said Lawrence, in consideration of the payment to him by said Bigelow of said sum of money, then and there, without the knowledge or consent of your orator, David A. Gage, or said Franklin Parmelee, (and of his the said Lawrence's own free accord,) executed, under his hand and seal, and delivered to the said Liberty Bigelow, his certain instrument in writing and release, whereby he, the said Lawrence, acknowledged that he had received the said last-mentioned sum of money in full payment of said Bigelow's portion of all money due him (said Lawrence) on said articles of agreement, and whereby, also, the said Lawrence released and discharged the said Bigelow, his property and estate, from all claims on account of said articles of agreement, and whereby, also, he, the said Lawrence, agreed to and with said Bigelow that, if the property mentioned in said articles had to be sold under any order of the court at Chicago, the interest of said Bigelow in the same should

352 be protected according to that settlement, as more fully appears by a copy of said instrument and release, hereto annexed, marked "Exhibit L," to which reference is hereby made as a part hereof.

And your orators further show unto your honors that all the covenants contained in the said articles of agreement between the said Daniel Lawrence and your orators and said Walter S. Johnson are joint covenants, and that therefore the said release by the said Daniel Lawrence of the said Bigelow, his property and estate, from all claims on account of said articles, without the consent of the said joint covenantors with said Bigelow, is a satisfaction in law and in fact of all the money and a discharge of all the duties and obligations which the said Daniel Lawrence might otherwise have claimed upon said articles of agreement.

To the end, therefore, that the said defendant, Daniel Lawrence, may answer all and every the matters and things hereinbefore charged

353 by way of supplement, and that your orators may have the full benefit of the said suit and proceedings against the said Daniel Lawrence, and that they may have such the same relief against the said

Daniel Lawrence as in and by their original bill is prayed, and the further relief that the covenants on the part of your orators to pay to said Daniel Lawrence the said sum of fifty thousand dollars and interest, contained in said articles of agreement, and all other covenants therein, to be kept and performed by your orators, be adjudged and decreed by this honorable court to be satisfied and discharged; that your orators be adjudged to be discharged from all claims of said Daniel Lawrence for money upon said articles of agreement, or on account of the same; and that said Daniel Lawrence, by the decree of this honorable court, be required to reconvey the said premises in said articles of agreement mentioned to your orators, and to discharge of record all lien upon
354 the same, and, in case of his refusal to make such reconveyance, that a commissioner be appointed and authorized by this honorable court to make such conveyance; or that your orators may have such further and other relief in the premises as the circumstances of their case may require, and as to your honors shall deem meet, may it please your honors to grant unto your orators the people's writ of summons, issuing out of and under the seal of this honorable court, requiring the said Daniel Lawrence to appear in this court on a day to be therein named, and answer this supplementary bill, &c.

FRANK. PARMELEE.
LIBERTY BIGELOW.
D. A. GAGE.

McALLISTER, JEWETT & JACKSON, *Compl'ts Sol's.*
W. K. McALLISTER, *of Counsel.*

STATE OF ILLINOIS, *County of Cook, ss:*

Franklin Parmelee, being first duly sworn, deposes and says
355 that he is one of the parties complainant in the foregoing bill of complaint; moreover, that he has read the said bill and knows the contents thereof, and that the several matters and things stated as of the knowledge of the said complainants are true, and as to the other matters stated on information and belief he believes them to be true.

FRANK. PARMELEE.

Subscribed and sworn to before me this 24th day of September, A. D. 1864.

[L. S.] OBADIAH JACKSON,
Notary Public.

Exhibit "L."

Received, Boston, August 12th, 1864, twenty-two thousand five hundred fifty-seven dollars of Liberty Bigelow, in full payment of his portion of all money due me on articles of agreement between myself, him, (said B.,) F. Parmelee, D. A. Gage, and W. S. Johnson, dated Sept. 15th, 1856, and recorded in the recorder's office of Cook Co., Ill's,
356 Oct. 17th, same year, in book 17 of deeds, page 71; and I release and discharge said Bigelow, his property and estate, from all claims on account of the same.

If the property mentioned in the above articles has to be sold under any order of the court at Chicago, the interest of said Bigelow in it is to be protected according to this settlement. Nothing herein contained shall in any wise affect my rights or demands against said Parmelee, Gage, or Johnson, or their interest in said property.

DANIEL LAWRENCE. [SEAL.]

[U. S. rev. stamp.]

And afterwards, to wit, on the third day of December, in the year last aforesaid, came Daniel Lawrence, and filed in the office of the clerk of said court his certain answer to the supplemental bill of complaint of Liberty Bigelow, David A. Gage, and Franklin Parmelee; which said answer is in the words and figures following, to wit:

357 In chancery.

The answer of Daniel Lawrence to the supplemental bill of complaint of Liberty Bigelow, Franklin Parmelee, and David A. Gage in a certain cause pending in the superior court of Chicago, wherein said Liberty Bigelow et al are complainants, and the said Daniel Lawrence is defendant.

This defendant, now and at all times saving and reserving to himself all benefit of exception to the many errors, uncertainties, and insufficiencies in the said complainants' said supplemental bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is or are necessary or material for him to make answer unto, he, the said defendant, answering, says that it is true, as alleged in said complainants' said supplemental bill of complaint, that the said complainants did, on or about the 4th day of August, A. D. 1863, exhibit their certain bill of complaint in this honorable court
358 against this defendant, but whether the substance thereof is correctly set forth in said complainants' said bill, this defendant can neither admit nor deny, but for the contents thereof he respectfully refers the said complainants to the said original bill on file in this honorable court, but he admits that said original bill of complaints relates to the same lands and tenements referred to in the supplemental bill of complaint.

This defendant, further answering, admits that he afterwards, and prior to the 12th day of August, A. D. 1864, and before the filing of said supplemental bill, appeared in this court and put in his answer to the said original bill of complaint, as by reference to said answer now remaining on file in said court, reference being hereby made thereto, will more fully appear, to which said answer, now remaining on file as aforesaid, this defendant begs leave to refer, and prays that the same may be taken as part of this his answer to said supplemental bill so far as the same, or the matters therein contained, may tend to show
359 to this court the claims of this defendant upon and against said lands and tenements, as well as the nature of the controversy and suit touching the same which were pending between this defendant and said complainants at the time when the supposed matters set forth in said supplemental bill of complaint are therein alleged to have arisen.

This defendant, further answering, says that at the time of filing his said answer to the said original bill of complaint, he also then and there exhibited to this court and then and there filed his cross-bill in said cause therein, and thereby, amongst other things, claiming to have made a loan of money to said complainants and one Johnson, and to have acquired said land from said complainants and said Johnson as security only for the payment of said sum so loaned with interest, and that he, this defendant, had acquired and had no interest in said premises except as such security as aforesaid, and praying, amongst other things, for a foreclosure, &c.

360 This defendant, further answering, says that, after the making of said loan as aforesaid and the receiving of said security therefor, and for a long time thereafter and until about the first day of April,

1861, the said complainants and said Johnson paid, or caused to be paid, to this defendant the interest accruing on said loan, but that thereafter and until the 12th day of August, A. D. 1864, they and each of them failed and refused to pay any sum or sums of money for interest thereon, and that on the 1st day of October, A. D. 1861, the said principal sum of money so loaned to them by this defendant became wholly due and unpaid to this defendant, but that said complainants, and said Johnson, and every of them, thereafter and until the said 12th day of August, 1864, wholly refused to pay the same or any part thereof.

This defendant, further answering, says, in respect of said supposed settlement in and by the said supplemental bill of complaint alleged to have been had & made on or about the said 12th day of
361 August, A. D. 1864, between the said Liberty Bigelow and this defendant, that at the time when said supposed settlement is in and by said supplemental bill of complaint alleged to have been made, that said original and cross suits were pending and at issue touching the matters in dispute in this court; that on or about said 12th day of August, 1864, and while said matters were so pending and in suit as aforesaid, to wit, at Boston, in the State of Massachusetts, the said complainant, Liberty Bigelow, sought and had divers interviews & conversations with this defendant touching the said matters so in controversy and pending as aforesaid, to the end and for the purpose, as then and there expressly declared and stated by him, the said Bigelow, to this defendant, of inducing and procuring him, this defendant, to take and receive of and from him, the said Bigelow, such portion of said money so borrowed by the said complainants and said Johnson as aforesaid, together with his, the said Bigelow's, share or portion of the
362 interest remaining due thereon, as justly belonged to him to pay as between him and the said parties so borrowing the same, but to have this defendant so receive the same without prejudicing or affecting his, this defendant's, rights or demands against said Gage, Parmelee, and Johnson, and without affecting his rights against their interest in the said lands so held as security for the money so loaned as aforesaid, together with the interest thereon to accrue and remaining unpaid, and so to receive the same, without in any way interfering with the said suits so pending as aforesaid; that this defendant then and there in the said interviews with said Bigelow insisted, and the said Bigelow then and there admitted to this defendant, that, upon the said 15th day of September, A. D. 1856, he, this defendant, had loaned to the said complainants and said Johnson the said sum of fifty thousand dollars, and that this defendant then and there, in fact, took and hath since held the said lands mentioned
363 in said deed and contract of that date as security therefor, and that said lands were, at the time said loan was made as aforesaid, conveyed or attempted to be conveyed to this defendant by said complainants and said Johnson only as security for said loan, and this defendant then and there claimed that there was justly due to him, on account of said money so loaned and also for interest at the rate of ten per cent., (10 per cent.,) the full sum of about sixty-seven thousand six hundred and seventy-one ($67,671 00) dollars of lawful money then remaining due and unpaid to him, and that the same was then and there a charge upon said lands by reason of the same being in fact only pledged to this defendant for security for said loan, and not absolutely sold to him as recited in said deed of conveyance made to him at the time of making said loan; that said complainant Bigelow then

and there admitted to this defendant that said sum of money was then and there so due and owing to this defendant for and
364 on account of said loan and interest, and that the same was so secured to this defendant as aforesaid upon said lands and tenements, and said Bigelow then and there stated and admitted to this defendant that his, the said Bigelow's, share or portion of the said sum of money so found due to this defendant was the sum of twenty-two thousand five hundred and fifty-seven dollars, ($22,557 00,) and that he, the said Bigelow, was then and there ready and willing and offered to pay the said sum of $22,557 00 to this defendant without prejudice to the rights of this defendant against the said Gage, Parmelee, and Johnson, or against their interest in said lands for the residue of said sum of money so found due and secured thereon as aforesaid, if this defendant would receive the same and save and keep harmless the said Bigelow in respect thereof, and protect his, the said Bigelow's, interest in said premises accordingly, to which proposals this defendant then and
365 there expressed his willingness to accede, so far as he could do so without afflicting his rights against said lands and against the said Gage, Parmelee, and Johnson for the residue of said moneys and such interest as should accrue thereon. And this defendant says that in so far as the said intercourse and negotiations between said Bigelow and this defendant hereinbefore set forth and the result thereof, then and there arrived at as aforesaid, may and shall in the law be deemed a settlement between him and the said Bigelow touching the amount of money then and there due and remaining unpaid to this defendant on said loan, that such settlement was then and there had between them upon the terms and basis aforesaid and not otherwise.

And this defendant denies that said supposed settlement was or is in any other way or manner than is hereinbefore stated a settlement of or concerning any moneys supposed to be due to this defendant upon the said articles of agreement in said complainants' said supplemental bill of complaint referred to.

366 This defendant, further answering, says that said Bigelow then and there, to wit, on the said 12th day of August, A. D. 1864, and at the time of the said negotiations and interviews touching the said supposed settlement or arrangement hereinbefore set forth, to induce this defendant to enter into the same, did then and there represent to this defendant that his, the said Bigelow's, wife, a sister of this defendant, and said Bigelow's friends, both in Boston and Chicago, were tormenting him and giving him no peace, because he, the said Bigelow, had failed to make payment to this defendant on account of the amount so remaining unpaid to this defendant on account of said loan and interest so due to this defendant as aforesaid; and that he, the said Bigelow, then and there wished and desired this defendant to take and receive said sum of twenty-two thousand five hundred and fifty-seven dollars ($22,557 00) upon said indebtedness, (which said sum he then and there represented to be his portion of said indebtedness,) without
367 prejudice to the rights of this defendant as to the residue, as before stated; and that if this defendant would so receive the same, that the family quarrels and hard feelings then existing by reason of the matters aforesaid would be at an end, and that peace would be restored in his, the said Bigelow's, family; and that the said Bigelow then and there further to induce this defendant to take and receive the said sum of money so ready to be paid by him, the said Bigelow, and to give him, the said Bigelow, a receipt therefor, he, the said Bigelow, then and there represented and stated to this defendant that he had

then but recently had a consultation with Mr. Charles A. Gregory, the solicitor of this defendant in said matters at Chicago, and that he, the said Bigelow, had, on such consultation, been informed by the said solicitor of this defendant, that he, this defendant, could take and receive from said Bigelow his, the said Bigelow's, supposed share or portion of said moneys so due him, and receipt the same to
368 him, the said Bigelow, without in any way invalidating this defendant's claim against said lands, or against said Gage, Parmelee, and Johnson for the residue of said indebtedness, and without releasing them or said lands therefrom; and that he, the said Bigelow, then and there represented that he had such a receipt so prepared for this defendant to sign. And this defendant further says that he was then and there ignorant of, and wholly unacquainted with, the laws of Illinois touching the effect of receiving the said portion of the said moneys from said Bigelow and giving a receipt therefor as requested by said Bigelow, except so far as he was informed thereof by said Bigelow, and that said Bigelow then and there represented to this defendant that said receipt, which is the same hereinafter more particularly mentioned, if signed by this defendant, and said sum of money taken and received as aforesaid, would not, under the laws of Illinois, operate to discharge said lands or the interest of said Gage, Parmelee, and
369 Johnson therein, nor to discharge them personally from the payment of the residue of said indebtedness, nor in any way or manner interfere with the progress or result of said suits as to the residue of said moneys remaining unpaid as aforesaid. And this defendant says that he then and there took and received of and from said Bigelow the said sum of twenty-two thousand five hundred and fifty-seven dollars, upon and on account of his belief that the said representations of said Bigelow touching the effect thereof were in all respects true, and entitled to credit, and without any other knowledge, information, or belief as to the effect thereof under the laws of Illinois, except such as was then and there communicated to him by said Bigelow, in that behalf, as aforesaid; and that he then and there so received the same from said Bigelow, and said Bigelow then and there paid the same to him on account of his, the said Bigelow's, portion of said indebtedness so there found due to this defendant, as aforesaid, but subject to the right
370 of this defendant to make the residue of said indebtedness out of said Gage, Parmelee, or Johnson, personally, or out of the said lands and out of the interest of said Gage, Parmelee, and Johnson, and every of them therein, and without prejudice to the right of this defendant so to do; and this defendant then and there agreed with said Bigelow to protect him and his interest in said lands on account of said payment so made and received, so far as he could do so without prejudicing him in his right to make the residue of said moneys out of the interest of said Gage, Parmelee, and Johnson, in said premises, or out of them personally.

This defendant, further answering, says, that while he admits that he received the said sum of money, under the circumstances and upon the understanding and arrangement with said Bigelow as hereinbefore stated, but not otherwise, yet, that he positively denies that he, the said defendant, did then and there, or at any other time or place,
371 make, execute, or deliver to the said Liberty Bigelow, or to any other person or persons in that behalf, his, the said defendant's, certain instrument, or writing, or release, under his, the said defendant's, hand and seal, in manner and form as is alleged in the said complainants' said supplemental bill of complaint in that behalf; and this

defendant says it is not true, as alleged in said supplemental bill of complaint, that he then and there, or at any other time or place, did execute under his, the defendant's, hand and seal, and deliver, to or for the said Liberty Bigelow, his certain instrument of writing or release, or any instrument of writing so sealed, or by this defendant caused to be sealed, containing all or any of the said supposed provisions, stipulations, or agreements in relation to the receipt of said sum of money so received of said Bigelow at the time aforesaid, or at any time received of him, or in relation to the releasing or discharging of said Bige-
372 low in the premises, as is in and by the said complainants' said supplemental bill of complaint in that behalf alleged or supposed.

This defendant, further answering, says that said supposed instrument of writing or release, in and by the said [the said] complainants' said supplemental bill of complaint alleged to have been executed by this defendant on or about the said 12th day of August, A. D. 1864, at Boston aforesaid, under the hand and seal of this defendant, and a pretended copy whereof, marked Exhibit "L," purports to be set out and annexed to said supplemental bill of complaint, and to which reference is therein made, is not the act and deed of this defendant, in this, to wit, that the said Bigelow, after paying to this defendant the said sum of twenty-two thousand five hundred and fifty-seven dollars, upon the understanding and arrangement hereinbefore stated, requested of this defendant to have from him such a receipt therefor as would show that he, the said Bigelow, was an honest man, and that he had done his part towards
373 removing all cause of complaint made against him by the friends and relatives of this defendant in respect of the non-payment of said moneys; that said Bigelow thereupon produced a certain instrument in writing, purporting, amongst other things, to be a receipt for said sum of money which he had then paid to this defendant; that said instrument was the same which said Bigelow had claimed and represented to this defendant would, if signed by him, fully protect him in respect of the residue of his said claim, both as against said lands and as against said Gage, Parmelee, and Johnson, and every of them, as hereinbefore in this answer stated; that said paper writing, so produced by said Bigelow, had not, at that time, any seal or scrawl thereon or thereto, but was wholly devoid of either seal or scrawl at that time; that the same did not in the body thereof, at that time, recite or purport that it was to be executed under the hand and seal of this defend-
374 ant; and this defendant says that he did then and there sign the said instrument, so produced and furnished by said Bigelow, upon the representations and at the request of said Bigelow, made in that behalf as aforesaid, and then and there delivered the same, so signed, to the said Bigelow; but this defendant denies that said instrument, at the time he so delivered the same to said Bigelow, had any seal or scrawl thereon opposite the name of this defendant, or anywhere on said instrument, whereby the same purported to be an instrument under seal or to be executed under seal; and this defendant further says that he did not at that time, or at any other time or times, authorize, empower, or direct any person or persons to affix any seal or scrawl importing a seal to said instrument, so then and there signed and delivered to said Bigelow as aforesaid; and that he had no knowledge, information, or belief that the said complainants claimed or pretended that said instrument, or any instrument set out by way of sup-
375 plement in their said supplemental bill, and marked "Exhibit L," as therein stated, was under seal, or purported to be in manner and form as shown by said Exhibit "L," until after the said supple-

mental bill was filed; but this defendant says that, except in respect of said pretended seal appearing opposite the name of this defendant, as shown in said Exhibit "L" attached to said supplemental bill, that he believes, from the general tenor thereof, that the residue of said instrument is the same in substance as the said instrument so presented to, and signed and delivered by, this defendant as hereinbefore stated, and then and there received by said Bigelow.

This defendant, further answering, says that, in and by the said pretended copy of said supposed instrument, it is not shown, nor doth it appear thereby, whether or not the said pretended seal is produced by a scroll or scrawl on the said supposed instrument, whereof the said Exhibit "L" is a pretended copy, or whether said pretended seal is
376 of some tenacious substance; but this defendant says that, under and by the laws of the said State of Massachusetts, within which the said pretended instrument purports to have been made and executed, that a scrawl or written or printed devise representing a seal in place of some tenacious substance is not in the law a seal, nor so treated or regarded by the laws of said State of Massachusetts.

This defendant, further answering, says that he denies that the execution and delivery of said instrument, so as aforesaid signed and delivered by him to said Bigelow, was at the time thereof unknown to, and without the knowledge or consent of, said Gage and Parmelee, but says he believes the same was so signed and delivered by him with the knowledge and consent of each of them; and he says, in respect thereof, that, about the time the same bears date, W. K. McAllister, esq., one of the solicitors of said Gage, Parmelee, and Bigelow in this suit, and one of their solicitors of record in the said original bill, and in the answer to said cross-bill, and who was one of their said solicitors at the
377 time when said instrument was prepared, was, as this defendant is informed and believes, at Boston aforesaid, and then and there aided and assisted said Bigelow in the preparation of the said instrument, and then and there drafted or dictated the concluding clauses or portions thereof, which profess to save the rights of this defendant and his demand against said Gage, Parmelee, and Johnson, and against their interest in said lands. And this defendant further says, on his information and belief, that he believes it to be true that said Gage and Parmelee aided and assisted said Bigelow, directly or indirectly, to a portion of the money so paid to this defendant as aforesaid.

And this defendant, further answering, says he believes it to be true that at and previous to the time said instrument was signed and delivered by him to said Bigelow, as hereinbefore stated, that all and each of said complainants were fully advised and knew that, under the laws of the State of Illinois, a technical release, so called, of one of
378 several joint debtors on payment of only part of the debt due, would operate to discharge his codebtors under certain circumstances; that said complainants also, at & prior to the time aforesaid, believed, and such was then the fact, that this defendant was wholly ignorant of the existence and operation of such a rule of law within the said State of Illinois, and that they, and each of them, then and there believed that in consequence of the ignorance of this defendant touching the operation of said rule of law in said State of Illinois, that they or one of them could procure this defendant to receive a portion of the money so due to him from them, and remaining unpaid, and obtain from him such an acknowledgement or other legal instrument upon such payment as would release and discharge the said complainants from the

payment of the residue of said debt, and that, in pursuance of this design, and to cheat and defraud this defendant of the larger part
379 of said money so due him, they, the said complainants, or one of them, with the knowledge and consent of the others of them, did procure and prevail upon this defendant, by means of the pretences and representations hereinbefore stated in that behalf, to receive said sum of twenty-two thousand five hundred and fifty-seven dollars, and to sign and deliver to said Bigelow the said instrument hereinafter admitted to have been executed by this defendant. And this defendant doth and will insist in this suit that neither the said instrument of writing, so admitted by him to have been executed and delivered to said Bigelow as aforesaid, nor the supposed instrument of writing set forth in said supplemental bill of complaint, is or are sufficient in a court of equity to release or discharge the said complainants, or the said Gage and Parmelee, parcel of said complainants, nor to release their interest in said lands of and from the payment of the residue of said indebtedness so remaining due and unpaid to this defendant as aforesaid. And
380 this defendant doth and will insist that neither of said supposed instruments of writing can or ought, under the circumstances hereinbefore stated, to have the effect of a release or discharge of the residue of said indebtedness so due to this defendant. And this defendant doth and will insist that he hath not released the said lands, or the said Gage and Parmelee, of or from the payment of the residue of said sum of money due him in manner and form as claimed in said supplemental bill of complaint, or otherwise.

And this defendant, further answering, says that he hath at all times heretofore been, and still is, ready and willing to protect said Bigelow on account of his said payment, so far as the same can be done without in any wise affecting the rights or demand of this defendant touching the residue of said money against said Parmelee, Gage, or Johnson, or without affecting, in any wise, his said right or demand against their interest in said property.

381 All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, &c.; and he therefore prays to be hence dismissed, with his reasonable costs and chargs, &c.

DANIEL LAWRENCE.

C. A. GREGORY,
T. H. KALES,
Sol'rs, & of Counsel for Defendant.

STATE OF MASSACHUSETTS, *Suffolk County, ss:*

Daniel Lawrence, being duly sworn, says that he resides in the State of Massachusetts, and out of the State of Illinois; that he is the defendant named in the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

DANIEL LAWRENCE.

Subscribed and sworn to before me this 12th day of November,
382 A. D. 1864. Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] A. W. ADAMS,
Notary Public for Suffolk County, State of Massachusetts.

[5-c'ts rev. stamp.]

And afterwards, to wit, on the 5th day of December, in the year last aforesaid, came the said Bigelow, Gage, and Parmelee, and filed in the office of the clerk of said court their certain replication to the answer of said Daniel Lawrence to their supplemental bill; which said replication is in the words and figures following, to wit:

383 Superior court of Chicago, in chancery.

The replication of Liberty Bigelow, David A. Gage, and Franklin Parmelee, complainants, to the answer of Daniel Lawrence, defendant, in supplemental bill.

These repliants, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove,
384 as this honorable court shall direct, and humbly pray as in and by their said supplemental they have already prayed.

McALLISTER, JEWETT AND JACKSON,
Compl'ts' Sol'rs.

Afterwards, to wit, on the fourteenth day of December, 1864, the following order was entered of record, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee *vs.* DANIEL LAWRENCE.	Original & supplemental bills.
DANIEL LAWRENCE *vs.* LIBERTY BIGELOW, DAVID A. GAGE, AND Franklin Parmelee.	Cross-bill.

And now, at this day, again come the said complainants in original bill, by McAllister, Jewett & Jackson, their solicicors, and the said defendant therein, and complainant in cross-bill, by C. A. Gregory,
385 his solicitor, also comes; and, upon the agreement of the parties, it is ordered that original and cross cause be, and the same are hereby, set for hearing on the pleadings and proofs therein, the third Monday of January, being the sixteenth day thereof, each party in the mean time to take proofs therein.

And afterwards, to wit, on the twelfth day of January, 1865, the following order was entered of record, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, FRANKlin Parmelee, and Walter S. Johnson *vs.* DANIEL LAWRENCE.	Original & supplemental bills.

And

DANIEL LAWRENCE *v.* LIBERTY BIGELOW, DAVID A. GAGE, FRANKlin Parmelee, and Walter S. Johnson.	Cross-bill.

And now, at this day, again come the said complainants in the
386 original and defendants in the cross cause, by Messrs. McAllister, Jewett & Jackson, and Sidney Smith, esquire, their solicitors, and the said defendant in the original and complainant in the cross cause, by Charles A. Gregory, esquire, his solicitor, also comes; and this cause coming on now to be heard, upon the motion of said complainant in said cross-bill to strike from the files of said cause the supplemental answers to said cross-bill of the defendants thereto filed in this cause by leave of court, and counsel being heard as well in support of said motion as in opposition thereto, and the court not being fully advised of and concerning the premises, reserves the decision thereon until this cause comes on for a final hearing.

And thereupon, on motion, it is ordered by the court that leave be, and is hereby, given to the said complainant in cross-bill to file herein his replication to the joint and several answers of the defendants, Bigelow, Gage, and Parmelee, and to the seperate answer of Johnson, nunc pro tunc, as of the 26th day of March, A. D. 1864.

387 And afterwards, to wit, on the 18th day of January, in the year of our Lord one thousand eight hundred and sixty-five, came the said Bigelow, Gage, and Parmelee, by their solicitors, and filed in the office of the clerk of said court their certain motion in writing in the words and figures following, to wit:

The superior court of Chicago, in chancery.

LIBERTY BIGELOW, DAVID A. GAGE, & FRANKlin Parmelee *vs.* DANIEL LAWRENCE.	Supplemental bill.

And now comes the said complainants to said supplemental bill, filed in this cause on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty-four, by McAllister, Jewett & Jackson, their solicitors, and state to the court in behalf of said com-
plainants that said complainants elect to not further prosecute
388 said supplemental bill, and move the court for a rule or order dismissing said supplemental bill for want of prosecution at the costs of the complainants therein before proceeding to final hearing thereon.

MCALLISTER, JEWETT & JACKSON,
Sol'rs for Compl'ts.

And afterwards, to wit, on the nineteenth day of January, 1865, the following order was entered of record in said court, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, & FRANKLIN Parmelee
vs.
DANIEL LAWRENCE.
} Supplemental bill.

And now come the said complainants to said supplemental bill, filed in this cause on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty-four, by McAllister, Jewett & Jackson, their solicitors, and state to the court in behalf of said
389 complainants that said complainants elect to not further prosecute said supplemental bill, and move the court for a rule of order dismissing said supplemental bill for want of prosecution at the costs of the complainants therein before proceeding to final hearing thereon. And counsel being heard on said motion, and the court having carefully considered the premises, and being fully advised therein, doth order that the said motion be, and the same is hereby, overruled; to which ruling and decision of the court in overruling their said motion, and refusing to dismiss the said supplemental bill, the said complainants therein, by their solicitors aforesaid, then and there excepted, and thereupon enter their exceptions herein.

And afterwards, to wit, on the same day and year last aforesaid, came Daniel Lawrence by his solicitor, and filed in the office of the clerk of said court two certain depositions in the words and figures following, to wit:

390 STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, in chancery.

LIBERTY BIGELOW ET AL.
vs.
DANIEL LAWRENCE.
} Original bill.

DANIEL LAWRENCE
vs.
LIBERTY BIGELOW ET AL.
} Cross-bill.

The depositions of witnesses produced, sworn, and examined on the part of Daniel Lawrence, the defendant to original bill and complainant to cross-bill in above-entitled cause, taken before me, Ira Scott, one of the masters in chancery of the superior court of Chicago, at my office in Chicago, by consent of the solicitors of the respective parties appearing before me; the said Daniel Lawrence, by his solicitor, Mr. Gregory, and the defendants to cross-bill and complainants to original bill, David A. Gage, Franklin Parmelee, and Liberty Bigelow, by their solicitor, Mr. McAllister, this fifth day of July, A. D. 1864.

391 Josiah Q. James, a witness produced, sworn, and examined in behalf of the above-named Daniel Lawrence, deposes and says:

1st int. State your name, age, residence, and occupation; and are you acquainted with the land and buildings situated on the southwest corner of State street and Randolph street, in Chicago, Illinois?

Ans. Josiah Q. James; am seventy-two years of age; residence, Chi-

cago; occupation, real estate broker and agent. I am acquainted with said premises. It is known as the Garret Block.

2d. Are you a judge of the value of real estate in that vicinity of the city, and were you acquainted with said premises in the summer and fall of 1856?

Ans. I am a judge of the value of real estate in that vicinity, and was acquainted with said premises in the summer and fall of 1856.

3d. What, in your judgment, was the value of the land aforesaid, per front foot fronting on State street, running to the corner of Randolph street, say, on the average, supposing the lot to be one hundred and
392 twenty-four feet front on State street, by one hundred and fifty feet deep to a forty-foot alley, at the time last named, the summer and fall of 1856, exclusive of improvements?

Ans. Six hundred and twenty-five dollars.

4. What improvements are there now upon said premises?

Ans. A large brick block covering the front, and a brick stable in the rear. The fronts on State and Randolph streets are fitted up for stores, offices, and halls.

5. What, in your judgment, would be the value of a leasehold of said premises from the fall of 1856 to, say, May, 1874, including the land and improvements, supposing the lessees to have a right at the end of such lease to take the fee at an appraised value?

Ans. I think the buildings themselves ought to pay a rental of nine thousand dollars per annum.

6. How long have you resided in Chicago, and how long have you been in the real estate business here?

Ans. I have resided here sixteen years, and been in the real estate business twelve years.

J. Q. JAMES.

Subscribed and sworn to this 5th day of July, A. D. 1864, before
393 me.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

Samuel H. Kerfoot, a witness produced, sworn, and examined on the part of the said Daniel Lawrence, deposes & says:

1st int. State your name, age, residence, and occupation.

Ans. My name is Samuel H. Kerfoot; of lawful age; reside in Chicago; am in the real estate business in Chicago; have been so engaged for nearly twelve years.

2d. Are you acquainted with lots numbers fifteen?

Ans. I am.

3d. Are you acquainted with the value of the real estate in the city, and were you acquainted with said premises in the summer and fall of 1856, and what, in your jugdment, was the value of said premises at that time, exclusive of improvements per front foot, fronting on State street, running to the corner of Randolph street, say, on the average?

Ans. I think I am acquainted with the value of real estate in
394 this city, and was in 1856, and was also acquainted with these premises. I should say, as far as I can recollect, said premises were then worth from five hundred to five hundred and fifty dollars a foot.

(Not concluded.)

1864, JULY 6.

William W. Boyington, a witness produced, sworn, and examined in

behalf of Daniel Lawrence, the defendant to original bill and the complainant to the cross-bill, deposed and says:

1st int. State your name, age, residence, and occupation.

Ans. William W. Boyington; age, forty-six; residence, Chicago; occupation, architect.

2nd. Are you acquainted with the following real estate, viz: lots numbers fifteen and sixteen, in block number thirteen, in Fort Dearborn addition to Chicago; also the north eight feet of lot number fourteen, in said block thirteen; and also that part of lot number fourteen, in block number thirteen, in Fort Dearborn addition to Chicago, commencing twenty feet north of the southwest corner of said lot, running thence north on a line with State street twenty feet, thence east one hundred and fifty feet, thence south twenty feet, thence west one hundred and fifty feet, to the place of beginning?

395

Ans. I am.

3d. Please state whether there are any buildings, and what, on said premises.

Ans. There are a set of buildings there used for two different purposes and erected at two different periods.

4. What, if anything, did you have to do with the erection of the buildings on these lots?

Ans. I was the architect for both buildings.

5. State, if you know, when the stable building in the rear was contracted to be built; also when the block fronting on State street was contracted to be built, and for whom they were to be built, and when the contracts were entered into.

Ans. I could not tell the date without referring to the contracts. The contracts for the barn building were made in 1854; as I recollect, they were completed as soon as they could be put up, in some three or four months. The contracts for the building in front were entered into about the first of June, 1856. The contracts, I believe, were executed in the name of F. Parmelee & Co., all of them. They were to pay for the erection of the buildings.

396

6. Please to state, if you know, the cost of the stable building, and also the cost of the buildings fronting on State and Randolph streets.

Ans. The cost of the stable building, as near as I can remember without hunting up the contracts, was something over twenty thousand dollars—between twenty and twenty-five thousand, I think—though not far from twenty thousand. About forty-five thousand dollars were expended for the front building; there were some additions, I think, which would bring it up to about fifty thousand dollars.

7. Have you any knowledge as to how much said improvements cost F. Parmelee & Co. from anything F. Parmelee told you?

Ans. I recollect of hearing Mr. Parmelee remark, about the time the front building was being finished, that the front buildings had cost about sixty thousand dollars; there was considerable work done in the back building that did not enter into the original contract, making that expenditure, including the contracts, about twenty-five thousand dollars.

397

8. State the earliest time at which the front buildings were occupied, if you know.

Ans. The bank building on the corner was occupied, my impression is, in January, 1857; it may not until February. It was early in the year. The balance of that building was not occupied until the spring of that year. They were completed during the winter.

Cross-examination:

1st cross-int. What was the state or progress of the work on the front building in the middle of September, 1856?

Ans. It was not very far advanced. I had only drawn certificates amounting to fourteen thousand dollars at that time, out of forty-five to fifty thousand. The work couldn't have been more than half done and probably not that.

2. State whether the work you have mentioned, or any part of it, was done under written contracts; if so, who prepared those contracts?

Ans. It was all done under written contracts, unless there were some minor matters not worth putting into a contract. The contracts
398 were prepared by myself.

4. In what capacity did you act, and what was your connection with the work in question?

Ans. I acted in the character of architect and general superintendant.

Direct:

At the time you say you had drawn fourteen thousand dollars of certificates, what proportion of the cost of the work did you keep back?

Ans. I think fifteen per cent; that was the usual price.

W'M W. BOYINGTON.

Subscribed and sworn to this 6th day of July, A. D. 1864, before me.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, in chancery.

LIBERTY BIGELOW ET AL. *vs.* DANIEL LAWRENCE. } Original bill.

DANIEL LAWRENCE *vs.* LIBERTY BIGELOW. } Cross-bill.

399 I, Ira Scott, master in chancery of the superior court of Chicago, do hereby certify that before the commencement of the examination of the witnesses, whose names are subscribed to the foregoing depositions, they were each by me duly sworn, according to law, and that they were subscribed and sworn to by said witnesses before me respectively on the days hereinbefore named, viz: the witness Josiah Q. James, on the fifth day of July, 1864, and the witness William W. Boyington, on the sixth day of July, 1864.

Dated Chicago, December 27th, 1864.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

[5-c'ts int. rev. stamp, cancelled.]

Superior court of Chicago, in chancery.

LIBERTY BIGELOW & OTHERS } Original bill.
vs.
DANIEL LAWRENCE. }

DANIEL LAWRENCE } Cross-bill.
vs.
LIBERTY BIGELOW ET AL. }

You will please take notice that we will, on Sept. 19, 1863,
400 at 10 o'clock a. m., or as soon thereafter as counsel can be heard, apply to the court for leave to file a bill supplemental to the original bill and several supplemental answers of the def'ts to the cross-bill in this cause, to be founded upon an affidavit of David A. Gage, to be filed.

You will also take notice that, on the 5 day of October next, commencing at 10 o'clock a. m. of that day, and continuing until completed, we shall take, before Ira Scott, master in chancery, at his office, in Chicago, the testimony of Liberty Bigelow, Alexander Parker, James H. Woodworth, Amos G. Throop, & W. K. McAllister, to be used on behalf of the defendants to the cross-bill of Daniel Lawrence in this cause.

Yours, &c.,

MCALLISTER, JEWETT & JACKSON,
Sol's for Compl'ts in Orig. Bill, & Def'ts in Cross-bill.

C. A. GREGORY, Esq.,
Sol'r for Daniel Lawrence.

SEPT. 17, 1864.

401 Superior court, in chancery.

DANIEL LAWRENCE }
vs.
LIBERTY BIGELOW ET AL. }

Notice served personally on G., Sept. 17th, 1864.

W. K. MCALLISTER.

STATE OF ILLINOIS, *County of Cook, ss:*

William K. McAllister, being duly sworn, doth depose and say that he served the within notice on Charles A. Gregory, by delivering to him a true and correct copy of the same on the 17th day of Sept., A. D. 1864; and further saith not.

W. K. MCALLISTER.

Subscribed to & sworn before me this 9th day of January, A. D. 1865.

OBADIAH JACKSON, JR.,
Notary Public.

[5-c't U. S. int. rev. stamp.]

STATE OF ILLINOIS, *County of Cook, ss:*

Superior court of Chicago, in chancery.

LIBERTY BIGELOW ET AL. *vs.* DANIEL LAWRENCE. } Original bill.

402 DANIEL LAWRENCE *vs.* LIBERTY BIGELOW ET AL. } Cross-bill.

The deposition of witnesses produced, sworn, and examined on the part of the defendants to the cross-bill in above-entitled suit, taken before me, Ira Scott, master in chancery of the superior court of Chicago, pursuant to the annexed notice, this fifth day of October, A. D. 1864, the parties appearing by their respective solicitors at said time and place.

Liberty Bigelow, a witness produced, sworn, and examined on the part of the defendants to cross-bill, deposes and says:

1st int. State your name, age, residence, and occupation; and do you know the parties to this suit?

Ans. Liberty Bigelow; age, forty-nine; residence, Melrose, Massachusetts; occupation, railroad agent; I know the parties.

2d. State who composed the firm of F. Parmelee & Co. in September, 1856.

Ans. Franklin Parmelee, David A. Gage, Walter S. Johnson, and Liberty Bigelow.

403 3d. State whether you, about that time, entered into negotiations with Daniel Lawrence for him to advance said firm any sum of money; and, if so, what sum of money; whether any arrangements were consumated, and what were the terms of such arrangement.

Answ. I did; the sum was fifty thousand dollars. He agreed to furnish said firm that sum; the interest to be paid by the firm was twelve per cent. per annum. The principal was to be paid in Chicago, in five annual instalments of ten thousand dollars each, and sooner, if we could do so, the interest to be payable in Boston. It was agreed that we should execute a deed to Daniel Lawrence of the premises situated on the southeast corner of State and Randolph streets, in Chicago, being the premises in question in this suit. Mr. Lawrence agreed to execute articles of agreement to and with said firm to sell and convey said premises to them upon payment by said firm of fifty thousand dollars and interest, payable in five years, with interest at the rate of ten per cent. per annum, to be expressed in said articles. We were to give a

404 bond and notes for five hundred dollars, payable semi-annually, for the extra two per cent. over and above the ten. In pursuance of that agreement, the firm of F. Parmelee & Co. executed and delivered to Mr. Lawrence a deed of said premises, and Mr. Lawrence executed with F. Parmelee & Co. the articles of agreement as above named, and which are now produced, marked Defendant's Exhibit No. 1. The members of said firm also executed and delivered to Mr. Lawrence said bond for the extra interest of two per cent., which bond is here produced, marked Defendant's Exhibit No. 2.

4. State what amount, if any, has been paid to Mr. Lawrence by F. Parmelee & Co. since the execution of the papers referred to as interest alone upon said sum of fifty thousand dollars.

Answ. Twenty-seven thousand dollars, being all of the interest up to April 1st, 1861.

5. State at what rate per cent. per annum on the fifty thousand dollars did you pay interest as aforesaid up to April 1st, 1861, and whether such payment of interest was in pursuance of the arrangement detailed, or otherwise.

405 Answ. Twelve per cent. It was paid in pursuance of said articles of agreement and bond.

6. State precisely what sum of money said Lawrence loaned and advanced to said F. Parmelee & Co. under the aforesaid arrangement.

Answ. Fifty thousand dollars.

7. Please state where the papers you have mentioned were made.

Answ. In Chicago, Illinois.

8. Are you one of the defendants to the cross-bill in this cause?

Ans. I am.

9. Are you acquainted with Daniel Lawrence, the complainant in the cross-bill; have you seen him write; and can you say you are familiar with his handwriting?

Answ. I am acquainted with him. I have frequently seen him write, and know his handwriting.

10. Look at the receipts and letters marked by the master

406 Defendant's Exhibits Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, respectively, and state whose signature is affixed to the same respectively.

Answ. They are all signed by Daniel Lawrence.

11. State whether or not any notes were given by F. Parmelee & Co. to said Lawrence for said two p'r cent. interest you have mentioned on said fifty thousand dollars; and, if yea, how many, and whether the same have been paid and taken up?

Answ. There were ten notes of five hundred dollars each given, of which all but one were paid and taken up at maturity; that one remains unpaid.

LIBERTY BIGELOW.

Subscribed and sworn to this 5th day of October, A. D. 1864, before me.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

The above-named witness, being cross-examined by Mr. Gregory, deposes and says:

1st cross-int. Are you one of the complainants in the original bill filed in this cause?

Ans. Yes.

407 (The solicitor of complainant in cross-bill and defendant to original bill, Daniel Lawrence, objects to the deposition of the witness Liberty Bigelow, on the ground that he is a party complainant to the original bill filed in this cause, and that he is a party defendant to the said cross-bill.)

LIBERTY BIGELOW.

Subscribed and sworn to this 5th day of October, A. D. 1864, before me.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

Alexander Parker, a witness produced, sworn, and examined on the part of the defendants to cross-bill, deposes and says:

1st int. State your name, age, residence, and occupation; and do you know the parties to this suit?

Ans. Alexander Parker; age, thirty-four; residence, Chicago; occupation, bookkeeper; I know the parties.

2d. State whether or not you were in the employment of F.
408 Parmelee & Co.; if yea, how long have you been so, and in what capacity, and whether there is any other person acting in the same capacity at the same time.

Answ. I have been in their employ since the sixteenth day of January, 1855, until the present time, excepting six months in the summer and fall of 1859. I have been engaged in the capacity of bookkeeper and cashier. There was no one else so employed during the time that I was.

3d. Since you have been thus employed, state whether or not you have had any knowledge of any transactions with Daniel Lawrence, of Massachusetts, other than relate to the premises situate on the southeast corner of Randolph and State streets, known as Garret Block, or articles of agreement other than those marked Def't's Exhibit No. 1, in this case.

Answ. I have never known of any other articles.

4. State, if you know, how much money said F. Parmelee & Co. have paid to said Daniel Lawrence on said articles of agreement as interest alone, up to the spring of 1861.

Answ. Twenty-seven thousand dollars.

409 Cross-examination by Mr. Gregory:

1st cross-int. How do you know this amount?

Ans. It is so stated on my books; and further, I procured the drafts to be sent to him.

2. How many drafts did you procure?

Ans. Nine.

3. What was the amount of each of those drafts?

Ans. Three thousand dollars.

4. How do you know that these payments were all for interest?

Ans. It was so stated to me by Mr. Parmelee in charging them, and I charged them all as interest.

ALEXANDER PARKER.

Subscribed and sworn to this 5th day of October, A. D. 1865, before me.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

Superior court of Chicago, in chancery.

LIBERTY BIGELOW ET AL. *vs.* DANIEL LAWRENCE. } Original bill.

410 DANIEL LAWRENCE *vs.* LIBERTY BIGELOW ET AL. } Cross-bill.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Ira Scott, master in chancery of the superior court of Chicago, do hereby certify that before the commencement of the examination of the

witnesses, whose names are subscribed to the foregoing depositions, they were each by me duly sworn according to law, and that the same were subscribed and sworn to by said witnesses, respectively, before me, on the fifth day of October, A. D. 1864, and that the same were taken pursuant to annexed notice of that date.

Dated Chicago, January 9th, 1865.

Master's fee, $7.

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

[5-c't U. S. rev. stamp.]

(NOTE BY CLERK.—The exhibits referred to in foregoing deposition as being attached thereto are not annexed to the same and are not in the possession of the clerk.)

411 And afterwards, to wit, on the 21st day of January, in the year last aforesaid, there were filed in the office of the clerk of said court three certain stipulations and an entry of appearance, in writing, of certain of the parties hereto, in the words and figures following, to wit:

BIGELOW ET AL.
v.
LAWRENCE.

The signature to Daniel Lawrence to exhibits numbered from three to twelve inclusive, attached to Bigelow's deposition, is admitted to be genuine.

Chicago, Jan'y 20, 1865.

CHARLES A. GREGORY,
Solicitor for Dan'l Lawrence.

It is admitted, as a fact proven in this case on behalf of Daniel Lawrence, that in August, 1863, and also in Nov., 1863, there was less than forty thousand dollars insurance upon the Garrett Block premises taken out by F. Parmelee & Co., for the benefit of Daniel Lawrence; that on the tenth day of August, 1863, C. A. Gregory, as the attorney
412 for Daniel Lawrence, made a demand upon F. Parmelee, in person, for additional insurance, so as to make the amount up to fifty thousand dollars; that such amount of insurance was not effected by F. Parmelee & Co.; and that, in Nov., 1863, Daniel Lawrence procured ten thousand dollars additional insurance to F. Parmelee & Co., loss payable to Daniel Lawrence, and that Daniel Lawrence paid the sum of $152 for the premium & insurance policies therein.

Chicago, Jan. 20, 1855.

McALLISTER, JEWETT & JACKSON,
Sol'rs for Bigelow et al.
CHARLES A. GREGORY,
Solicitor for D. Lawrence.

In the superior court of Chicago, in chancery.

LIBERTY BIGELOW ET ALS.
vs.
DANIEL LAWRENCE. } Original bill.

DANIEL LAWRENCE
vs.
LIBERTY BIGELOW, AND HARRIET A. BIGELOW, his wife; Daniel A. Gage, and Eliza A. Gage, his wife; Walter S. Jonson, and Electa M. Johnson, his wife; Franklin Parmelee, and Adaline Parmelee, his wife, deceased during pendency of suit, & death suggested of record. } Cross-bill.

413

And now comes the said Harriet A. Bigelow, Eliza A. Gage, and Electa M. Johnson, wives of defendants in said cause, and severally enter their appearance in said cause as defendants to the said cross-bill of said Daniel Lawrence, by their solicitors, McAllister, Jewett & Jackson, solicitors for said Harriet A. Bigelow, Eliza A. Gage, and by Sidney Smith, esq., as solicitor for said Electa M. Johnson.

SIDNEY SMITH,
Sol. for Electa M. Johnson.

MCALLISTER, JEWETT & JACKSON,
Sol'rs for Def't's to Cross-bill.

In the superior court of Chicago, in chancery.

LIBERTY BIGELOW ET AL.
vs.
DANIEL LAWRENCE. } Original bill.

DANIEL LAWRENCE
vs.
LIBERTY BIGELOW, AND HARRIET A. BIGELOW, his wife; David A. Gage, and Eliza A. Gage, his wife; Walter S. Johnson, and Electa M. Johnson, his wife; Franklin Parmelee and Adaline Parmelee, deceased, whose death is suggested of record. } Cross-bill.

414

It is hereby stipulated by the said Harriet A. Bigelow, wife of said Liberty Bigelow, and by said Eliza A. Gage, wife of said David A. Gage, and by said Electa M. Johnson, wife of said Walter S. Johnson, by their respective solicitors, that the answers of the respective husbands of said wives shall stand as the respective answers of said wives the same as though the said wives had individually signed & filed said answers. And the said Daniel Lawrence, by his solicitor, hereby waives all objection to the said answers of said husbands being also taken & considered as the answers of the said wives, respectively.

MCALLISTER, JEWETT & JACKSON,
Sol'rs for Def'ts to Cross-bill.
SIDNEY SMITH,
Sol'r for Electa M. Johnson.
CHARLES A. GREGORY,
Solicitor for Daniel Lawrence.

415

Superior court of Chicago, in chancery.

BIGELOW ET AL.
vs.
LAWRENCE. } Bill, supplemental bill, & cross-bill.

It is stipulated between the parties that the reported decisions and

statute laws of the State of Massachusetts on the subject of interest on loans and forbearance of money and of releases under seal are to be taken and deemed evidence in this case as to what are laws of that State on those subjects. This stipulation made in open court this 21st day of January, 1865.

C. BECKWITH,
SIDNEY SMITH,
Of Counsel for Bigelow.
GAGE, PARMELEE AND JOHNSON,
C. A. GREGORY, and
F. H. KALES,
Of Counsel for Lawrence.

416 And afterwards, to wit, on the 25th day of January, in the year last aforesaid, came Daniel Lawrence, by his solicitor, and filed in the office of the clerk of said court a certain affidavit of H. T. G. Chapman in the words and figures following, to wit:

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

H. T. G. Chapman, being first duly sworn, deposes and says that he resides in Charlestown, Massachusetts, and is twenty-six years old; that, in the month of August, 1864, he was in the employment of the Cheshire & Rutland & Burlington railroad companies, as bookkeeper, at No. 82 Washington street, in said Boston; that he is well acquainted with one Liberty Bigelow, of Melrose, Massachusetts, who does business in Boston aforesaid, and who has now, and in the month of August, 1854, had, his office in the same room where affiant was employed. Affiant says he knows Daniel Lawrence, of Medford, Massachusetts.

417 Affiant states that, in the month of August, 1864, at the request of said Bigelow, and to accommodate him, he copied for him a certain paper from an original rough draft, handed to this affiant by said Bigelow, and that the writing then and there made by affiant at the request aforesaid is here attached; that the date and the sum of money therein written was at first left blank; that on the 12th day of August, 1864, affiant, at the request of said Bigelow, and in the presence of said Lawrence and said Bigelow, filled in the date—i. e., the figures 12th—and also filled in the sum of money—i. e., twenty-two thousand five hundred fifty-seven dollars—and also then and there made another copy of the paper hereto attached, in substance the same as the paper hereto attached. Affiant states that neither the original rough draft, which was handed to affiant to copy, nor either of the copies thereof made by affiant, purported to be a sealed instrument, or had thereon any seal or scrawl representing a seal, but in respect thereof were precisely like the paper hereto attached; that then and

418 there said Lawrence signed one of said copies, and gave the same to said Bigelow, and carried away with him the copy hereto attached, which last-mentioned copy affiant never saw again till the same was shown to affiant in October, 1864, and now again finds produced to affiant by the officer before whom the deposition is made. Affiant states that, after the said Lawrence had left the office, and either on the said 12th of August, or on the day subsequent thereto—but precisely the time affiant cannot recollect, only he knows it was after said Lawrence had departed—said Bigelow brought the said copy which bore the signature of said Lawrence to affiant, and asked affiant if he could make a seal and put it thereon, and requested affiant to do so. Affiant

replied that he could, and thereupon affiant affixed a paper seal to said instrument. Affiant states that he remembers positively that this was done by affiant out of the presence, sight, and hearing of said Lawrence, and without his request, knowledge, or consent, so far as affiant knows; that there was no seal or scrawl in place of a seal on the said paper
419 when so handed to this affiant; the said instrument so sealed as last aforesaid was handed back to said Bigelow. Affiant states that during said month of August, and before the said 12th day thereof, that a person from Chicago, who bore the name of McAllister, and with whom said Bigelow consulted, and had conversation with reference to said instrument, in said office, was present at said office in Boston, and wrote with a lead pencil on a slip of paper some of the words or sentences contained in the original draft, of which the paper hereto attached is a copy, within the sight and hearing of the affiant; but said McAllister was not in the said office at any time when said Lawrence was there, so far as affiant knows.

H. T. G. CHAPMAN.

420 DECEMBER 31, A. D. 1864.

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

ALBERT W. ADAMS, NOTARY PUBLIC, BOSTON, MASS. } Then personally appeared H. T. G. Chapman, above named, and made oath that the foregoing affidavit by him subscribed is true.

Before me,

A. W. ADAMS, *Notary Public.*

[5-ct. U. S. int. rev. stamp.]

And afterwards, to wit, on the 25th day of January, in the year last aforesaid, there were filed in the office of the clerk of said court the depositions of certain witnesses, who were examined in open court on the hearing of said cause; which said depositions are in the words and figures following, to wit:

In the superior court of Chicago, in chancery, at the January term, A. D. 1865.

LIBERTY BIGELOW, FRANKLIN PARMELEE, David A. Gage, *vs.* DANIEL LAWRENCE. } Bill and supplemental bill.

421 And

DANIEL LAWRENCE *vs.* LIBERTY BIGELOW ET AL. } Cross-bill.

Deposition taken in open court on the hearing of the said cause.

Sanford B. Perry, a witness produced on behalf of the complainants in original bill and of the defendants in the cross-bill, being duly sworn, deposes and says:

Sanford B. Perry sworn:

Resides in Chicago; am att'y at law. I know Daniel Lawrence, of Medford, Mass.; have known him since 1845; know his signature;

paper presented is signed by him; lived in Medford from April, 1845, to Aug., 1856, and during a considerable portion of that time did business for him professionally; have seen him write a great many times; know his signature very well; should know it anywhere.

SANFORD B. PERRY.

422 Sworn to before me this 19th day of January, A. D. 1865.

THOMAS B. CARTER, *Clerk.*

Ivers C. Phillips, a witness produced in behalf of the complainant in the original bill and of the defendant in the cross-bill, being duly sworn, deposes and says:

My name is Ivers C. Phillips; am thirty-two years of age; a railroad agent; live in Cambridge, Massachusetts, and do business in Boston, Mass. I know Daniel Lawrence; have known him five or six years. I know his handwriting; he has occasionally done writing in my office. I have furnished him stationary in my office, and have seen him write. The signature to the paper shown me is in the handwriting of Daniel Lawrence. (Witness is shown the paper shown to witness Sanford B. Perry and marked Exhibit "A.") I have seen this instrument before; it was some time in August last in Boston. The office I speak of
423 was No. 82 Washington street, Boston; the office of the Cheshire, Rutland and Burlington railroad. I know Liberty Bigelow; his office is in the same room; he has a desk in my office. The body of the writing shown me, all except the signature, was drawn up in my office by my clerk. I was in the office at that time. I see the seal on the right hand of the paper of a diamond shape. I cut that seal, and my clerk fastened it to the paper. I saw him so fasten it to the paper with mucilage or gum-arabic paste. At the time the seal was so affixed, the signature of Daniel Lawrence was not affixed; the ink was hardly dry. I am positive this is the paper. I know it from the blot in the center. My clerk at first thought he would rewrite it, and tried to erase it. I know this is the paper, and have no doubt of it. I did not see Daniel Lawrence sign the paper. I know W. K. McAllister. He was in the office about that time. I cannot be certain that it was on the same day. I cut the seal in the diamond shape at the request of Liberty Bigelow. In other respects the instrument was as it is now, except
424 that I think there was no stamp on it. I think the initials D. L., cancelling the stamp, were written by Daniel Lawrence, but am not sufficiently familiar with his handwriting to say whether the figures are his or not; so far as the body of the writing is concerned it appears to me to be the same now as then, but there may have been erasures or additions. I did not read the instrument after the seal was affixed. I think Mr. Bigelow took the paper; at the time Mr. Lawrence was not present.

Cross-examination:

The name of my clerk was H. T. G. Chapman. Since last August he has resided at Charlestown, Mass., but does business in Boston; at that time he was clerk for me. I think he is now clerk with the Whipple File Company. I did not say I instructed my clerk to draw up this instrument. Mr. Bigelow requested him to draw it up. I do not know from what he prepared it. My clerk was not a lawyer by profession or practice. I cannot say what Mr. Bigelow said to him when he
425 requested him to draw it up. I did not hear the conversation. This diamond-shape seal was cut from a piece of envelope, or an

old envelope, or some piece of post-office paper; there is nothing about it that enables me to distinguish it from any other piece of paper of the same color. I do not remember whether at that time my clerk drew up any other paper for Mr. Bigelow. I sometimes drew up or copied papers for Mr. Bigelow, and so did my clerk. I may have done so that day, but do not remember. I came here from Boston, because Mr. Bigelow requested me to do so, in order to testify in this case. My general business is that of a contracting agent and ticket agent for the through line from Boston to the West. I came here merely at the request of Mr. Bigelow. I do not know whether I shall receive any compensation for coming. I never shall ask him; of course, he will bear my expenses. I am decidedly a friend of Mr. Bigelow. I am not related to him
426 in any way, either by marriage or otherwise. I do not know why my deposition was not taken instead of my coming here. I came at Mr. Bigelow's request. Mr. Chapman is about from 20 to 30 years of age, I should think. He is now a clerk on a salary in the firm I have mentioned. I will swear that Mr. Chapman did not cut out and affix the seal to this instrument. I have already sworn that I did it. I am positive of it; the seal was affixed with mucilage, and could not be taken off without tearing the paper. Mr. Chapman's desk and mine adjoined each other. I cut the seal, and Mr. Chapman affixed it. I stood behind Chapman when he fixed on the seal. We were talking about the blot on the paper; and as a matter of curiosity stood by and saw him fix it on. I handed him the seal, and stood to see him fix it on. I have seen seals affixed before.

Qet. Was your attention drawn to the fact that Mr. Lawrence's name was not on the paper?

427 Ans. No, sir; there was no conversation about it.

Qet. Was your attention drawn in any other way to the fact at that time as to whether Mr. Lawrence's signature was or was not to the paper shown you.

Ans. It was.

Qet. In what other way?

Ans. By the ink not being dry on the paper. My clerk was at work on this paper when I passed over the seal to him, and Mr. Lawrence was not present.

Int. When was it that you were first spoken to in reference to testifying in this case?

Ans. I should say it was Monday or Tuesday of last week.

Int. That was the first?

Ans. Yes, sir.

Int. Do you know Mr. Lawrence well?

Ans. Yes, I know him generally, but not intimately.

Int. Do you know whether he is reputed a man of probity?

(Question objected to.

Question answer waived.)

428 Int. Suppose, sir, you were informed and knew that Mr. Lawrence had positively testified that there was no seal affixed to this instrument at the time he signed it, would you, or would you not, think or believe that you might possibly be mistaken in testifying the contrary?

Ans. I think not, sir.

Int. Is that instrument the one, (marked Exhibit "A,") as you understand it, drawn by Mr. Chapman at the instance of Mr. Bigelow?

Ans. It is.

Int. Will you state in whose handwriting this document is?

(Witness is shown a document or paper marked Exhibit B.)

Ans. In Mr. Chapman's.

Int. The same clerk who wrote the other document?

Ans. The same.

Int. Whose handwriting is that in the corner in pencil?

Ans. It looks like mine.

429 Int. When was that put on?

Ans. I can't tell.

Int. How long after the other instrument prepared by Mr. Chapman was it that this instrument was made by him; and was it before or after the making of the former instrument?

Ans. I can't say.

Int. Is this signature or memorandum in your handwriting?

Ans. I think it is. It looks like it. I do not know for what purpose it was put there, and have no recollection of it.

(Mr. Kales now offers Exhibit "B" in evidence for the purpose, amongst other things, of testing the recollection of the witness.)

Int. Are you any more certain that Mr. Lawrence had not signed the instrument purporting to be under seal at the time the seal was put on than you are of the handwriting in pencil in the corner of Exhibit "B?"

Ans. I am.

Direct examination resumed:

430 Int. Have you any recollection of your clerk making a copy of Exhibit A?

Ans. I have not.

Int. Have you any recollection of seeing a copy of Exhibit A in the handwriting of your clerk, Chapman, in your office about the time making of the original?

Ans. No, sir.

Int. Do you know, or have you any recollection, whether the signature in pencil mark, H. T. G. Chapman, was placed there before or after the instrument was written or copied *on the to the* paper?

Ans. I have no recollection of it.

Int. Are Liberty Bigelow and Daniel Lawrence related in any way by marriage?

Ans. I think th[illegible] are.

Int. In what way?

Ans. I believe Mr. Bigelow married Mr. Lawrence's sister.

Cross-examination resumed:

Int. Have you, on any occasions and at different times, prepared or caused to be prepared seals and instruments of writing for Mr. Bigelow at his request?

431 Ans. I have copied papers for him, and it is possible I have cut seals for him. I do not remember; I often copy papers for him.

Int. Have you any means of fixing the day of the month and year upon which the seal was placed on Exhibit "A?" If so, state it, and state, as near as you can, the date when the same was done.

Ans. I fix the year from the fact that Mr. Chapman only worked for me in the year 1864. I can't tell the exact day of the month, but I fix it in the month of August, from the fact that he left my office on or about the 1st of September, and this was a short time before.

Int. Do you remember the day of the week upon which this was.

Ans. No, sir; I cannot.

Int. When was your attention first drawn to the question whether a

seal was placed upon this paper after the time you have stated it was placed thereon?

Ans. It was on Monday or Wednesday of last week; I don't remember which. It was the same time when Mr. Bigelow spoke to me about coming here.

432 Int. Did you first see the paper Ex. A before or after the time you saw Mr. McAllister at your office in Boston, as you have testified?

Ans. I can't say.

Examination by the court:

Int. I understood you to swear that Ex. A is as it was when you saw it in your office, except the signature of Mr. Lawrence and the stamp.

Ans. I do.

Int. Were the words "seal" on the seal there at that time?

Ans. I cannot say.

Int. Is the word seal in your writing?

Ans. No, sir.

Int. In whose handwriting is it?

Ans. I do not know; the E and A looks like Chapman's; the S and L do not; still he may have written it.

IVERS C. PHILLIPS.

Subscribed and sworn to before me this 19th day January, 1865.

THOMAS B. CARTER, *Clerk.*

433 Sanford B. Perry, being recalled by complainant:

Int. Will you look at the writing constituting the cancellation of the stamp on Exhibit A, and state in whose handwriting it is?

Ans. The initials D. L. were written by Daniel Lawrence. I have no doubt that the balance of the writing on the stamp was written by him, but am not so familiar with his general writing as I am with his signature.

By the court:

How old a man is Mr. Lawrence?

I should think he was near 60 years of age. He may be near 70 years old, but should not think so. He has been a man of vigorous, active habits for years past, except occasional attacks of illness peculiar to him, arising, as he supposed, from the effects of poison.

SANFORD B. PERRY.

Subscribed and sworn to before me this 19th day January, 1865.

THOMAS B. CARTER, *Clerk.*

434 William K. McAllister, a witness produced on behalf of complainant, being duly sworn, deposes and says:

1 int. What is your name, occupation, and residence?

Ans. My name is William K. McAllister; am an attorney at law; and reside in Chicago, Illinois.

2 int. Do you know the parties to this suit, including Daniel Lawrence?

Ans. I know all the parties, except some of the females, wives of other parties.

3 int. Are you acquainted with the handwriting of Daniel Lawrence?

Ans. I am.

(Witness is shown the paper marked Exhibit "A.")

4 int. Have you ever seen that instrument before?

Ans. Yes, sir; several times.

5 int. Were you present at Mr. Phillip's office in Boston when that instrument was got up and prepared for signature?

435 Ans. I was.

6 int. Who wrote the body of it?

Ans. A man by the name of Chapman.

7 int. State what occurred there in that office, and in your presence, in relation to that instrument before its signature by Daniel Lawrence.

(Objected to by Mr. Kales on the ground that it has not been shown that Mr. Lawrence was present so far as relates to any of the conversations had on that occasion in absence of Daniel Lawrence.)

Ans. Mr. Bigelow had a paper which he said was not sufficient, according to the agreement between Mr. Lawrence and him; that there wanted to be something added to it, and wanted an addition drawn to it, and then requested Mr. Chapman to copy the whole. Mr. Chapman, as I supposed, went to work, and soon handed over (Exhibit A.) He sat on a seat in one corner of the room—Philips next to him, and Bigelow the other side of Phillips. He handed this paper over to Mr. Bigelow,

436 who was sitting at his desk at the same side of the room, but next to Mr. Phillips' desk; the paper was in the same condition it is now, except that the word "seal" was not writen on the seal. The revenue stamp was not on it, nor the name of Daniel Lawrence. This blot was upon it, and the first question he asked was whether he hadn't better have another copy made on account of the blot; I refer to the blot on the 5th and 6th lines from the bottom; I looked at it and told him the words were all legible, and that is wasn't necessary. I then suggested to him, Mr. Bigelow, that he had better put the word "seal" on top of this seal. He then sat down and put that word on; Mr. Bigelow did this; I stood right by him when he put it on; he said something about printing it, so as to make it as large as the thing would admit of.

8 int. Did anything else occur at that time?

Ans. No, sir; I sat around there a while, and then walked

437 out. I walked, I think, as far as the park—the common, I think, they call it. I came back, and went to the house where I was stopping, called Young's Hotel, about 6 or 10 rods from Mr. Bigelow's office. Young's Hotel is on a street that runs at right angles with Washington street, and came out and ended right in front of Bigelow's office. I, in coming back there, met with Henry Fish, of Joliet. I sat and talked with him quite a while; I cannot say how long. On his leaving, or shortly after, I started to go down to 82 Washington street, Bigelow's office. I got part way, and saw Mr. Bigelow and Mr. Lawrence come out of that office. They stopped barely a minute. Bigelow come right up to where I was; we went into Young's together. On being seated, he handed me that paper, Exhibit A, with the revenue stamp on and the signature of Daniel Lawrence; the body of the paper, the seal, the stamp, and the signature in precisely the same condition it is in now. As he handed it to me, he said, "I think this ought to go on record, as all the other papers are on record; you take it home with you and

438 put it on record." Mr. Lawrence was not present at Young's Hotel at the time the paper was delivered to me. I put it into my pocket-book, and the next day, the 13th of August, I started for home, and placed it on record on the 16th of August—the day I arrived in Chicago.

9 int. From the time this Exhibit A was delivered into your possession by Bigelow at Young's Hotel, in Boston, was it any time out of your possession until it was left by you for record in the recorder's office in Chicago, Illinois.

Ans. Yes, sir; when I came here, on Tuesday morning, the 16th, a man met me at the depot, saying that Mr. Fred. Parmelee was lying at the point of death, and was in a great anxiety to see me on account of some business matters, and wanted I should go to his huse as quickly as possible. I went immediately in [and] the direction of the omnibus office, in Chicago, and asked Mr. Parker, the bookkeeper, to do me the favor to take this paper, handing it to him, to the recorder's office for record.

10 int. With this exception, was it out of your possession?

439 Ans. With this exception, it was not out of my possession from the time I received it in Boston, nor out of my pocket-book, in the State of Massachusetts. Somewhere between Albany and some other point west I took it out of my pocket-book while in the cars, and looked at it, and then replaced it.

11 int. Upon the occasion of the preperation of this instrument, in Bigelow's office, in Boston, and up to the time you left the office, as you have stated, was Daniel Lawrence in the office?

Ans. He was not; he was expected there, but was not there.

12 int. How much time elapsed after you left the office before this paper was handed you?

Ans. I didn't look at my time-piece; it would be a mere impression. He was expected at the office at ten o'clock in the forenoon. I was there until something after ten. When I came back I noticed

440 that people were come into (coming to a?) saloon kept there for lunch; they had lunch there from 11 to 1 o'clock. It must have been in the neighborhood of two hours.

13 int. When Bigelow and Lawrence parted near Bigelow's office, in which direction did Lawrence go?

Ans. Lawrence went along Washington street—I don't know whether north or south, east or west—and Bigelow went off on the street at right angles with Washington street.

14 int. How did they part; what occurred when they parted?

Ans. I don't know as anything occurred; I did notice something like "good day;" there was no flourish about it.

15 int. Did you see Lawrence again that day?

Ans. No, sir; I did not.

16 int. Where was Frank Parmelee, Gage, and Johnson at the time of this transaction in Boston?

Ans. They were neither of them there.

441 17 int. Were either of them knowing to this transaction?

(Objected to by Mr. Kales.)

Ans. No, sir; Johnson lived in Wisconsin.

18 int. Where did Gage and Parmelee live?

Ans. They lived in Chicago. Mr. Gage was out of town, and had been for some time when I left to go east.

Cross examination:

1 int. You say you left Boston the next day after receiving this instrument?

Ans. Yes, sir; I left and went over to Albany.

2 int. Why did you leave immediately after receiving the instrument?

Ans. That was the time I was going home anyhow. I had fixed it some 5 or 6 days before; I had written home to say I was coming home then; that was the reason they knew I was coming home.

8 int. When did you leave Chicago to go to Boston?

Ans. It was either the last or next to last day of July. I arrived in Boston on the 2nd of August. I went to New York.

442 4 int. Was Mr. Bigelow in Chicago the latter part of July last?

Ans. He was in Chicago during the early part of July, to the best of my recollection.

5 int. Did you go to Boston together?

Ans. Yes sir; we did go together, from New York only.

6 int. You say you arrived in Boston on the 2nd August; where were you on the 1st August?

Ans. In the city of New York.

7 int. Did you meet Bigelow in New York on the 1st August?

Ans. If I got there on the 1st August I must have met him there. I left New York with him on the 1st August. I must have started earlier.

8 int. How did you happen to meet Mr. Bigelow in New York.

Ans. I wrote to him previously that I was going to New York, and would like to have him come there if he had time.

9 int. What was the first time that you saw Mr. Lawrence after you arrived in Boston?

443 Ans. The only time I saw him was when he came out of that office.

10 int. Was Exhibit A the first instrument purporting to be a release to Bigelow in this matter which was drawn up?

Ans. It was not.

11. Int. When did you first see any other instrument of this character?

Ans. Before I went from Boston to my home in Washington County, New York, I drew an instrument, a straight-out release, and left it with Mr. Bigelow.

12 int. Have you that instrument with you?

Ans. I have not.

13 int. Do you know where it is?

Ans. I have never seen it since I handed it to him. I discarded it.

14 int. Did Mr. Bigelow make a copy of that straight-out release which you drew?

Ans. Not that I know of.

15 int. What was the paper which Bigelow showed you, and
444 which he said was not according to the agreement of the parties; and in whose handwriting was it?

Ans. It was a paper in Mr. Bigelow's own handwriting, like this, (Exhibit "A,") except that the word "Boston" was not in it, and the name of Liberty Bigelow came before the amount of money expressed here, and it concluded at the word "settlement," in the 4th line from the bottom of this; and when Mr. Chapman commenced copying, he spoke out and said, "There is no place mentioned here; shan't I put in the word Boston?" I said, "Yes." And when I came to look at it I saw he had the name below the sum of money, expressed here, instead of above, as it was in the instrument he was copying from.

16 int. Did the instrument which you drew contain the concluding clause which is found in "Exhibit A," professing to save Lawrence's rights against Parmelee, Gage, & Johnson, or against their interest in the said property?

Ans. I drew two. Neither of them did.

445 17 int. Was it in respect, then, of this part of the agreement that Bigelow said the instrument which you drew was not according to the agreement of the parties?

Ans. The first instrument which I drew was a straight release of all the

parties, for it was drawn with reference to such a settlement. Upon returning from Salem, Mr. Bigelow told me that no such trade as that could be made; that he would not settle for all the parties; but he guessed he could settle for himself. That, of course, had no such clause reserving any rights, and was laid aside. The next instrument, then, was drawn with reference to the new phase of things, and was similar to this drawn under Mr. Bigelow's dictation, and without any saving clause or proviso to it. He rewrote that. I think that had not the clause in it either, that the property in the above articles had to be sold; that was not in it either. He saw Mr. Lawrence again on that, and stated that that part had tobe put in; and he drew one, and that was the one that this was copied from, except these last words—the proviso.

446 18 int. You say he, Bigelow, drew it?

Ans. Yes, sir. He then saw Mr. Lawrence again, and that morning informed me that that one would not do; that Mr. Lawrence objected to it without a proviso saving his rights against the other parties, and wished me to draw one full and complete. I drew one in these words on a seperate piece of paper, and that, with the paper last mentioned, in Bigelow's handwriting, was passed over to Mr. Chapman to copy.

19 int. Had you had any correspondence with Mr. Lawrence about releasing all or any of the parties in said articles of agreement named, before your arrival in Boston?

Ans. I never had any correspondence with Mr. Lawrence in regard to anything involved in this suit.

20 int. Do you know whether Mr. Lawrence had any legal adviser advising him with reference to this release, of its operation and effect, at Boston, at the time you have referred to?

Ans. I don't know anything about it.

447 21 int. Did you talk with Mr. Lawrence in these negotiations?

Ans. No, sir. When he was here the year before I had some talk with him, and he got very angry with me, and I didn't care to try him again.

22 int. Upon the instrument from which this "Exhibit A" was copied, as you have stated, was there any seal or seals; and, if any seal, was the word "seal" written upon the seal?

Ans. Yes, sir; there was a seal on every instrument drawn, and every one put on with a big red wafer. The two that I drew had the words "As witness my hand and seal," or something to that effect; one of them did, I am positive; I cannot be so positive as to the other, but each of them had a seal when exhibited to Mr. Lawrence.

23 int. What other, if any, business did you have in Boston at this time; and, if any, what was it?

448 Ans. I had no other business. I had had an appointment for three months to go there and go a fishing.

24 int. With whom?

Ans. With Fisk and Thompson, and with Mr. Bigelow. We have all of us been very good friends for several years. There is another matter of business which I had. I had received a letter from my father to come and alter his will, a will which I had myself drawn some five years ago.

25 int. I have asked you if the word "seal" was written upon any of the adhesive seals which you say were put upon the other drafts of this instrument.

Ans. If you did, I misunderstood you.

26 int. Now please state how it is in this respect.

Ans. I think not.

27 int. Had the instrument from which this was directly copied,
449 or had it not, the word "seal" written upon the adhesive seal?

Ans. I think not, from the fact which induced me to suggest to putting it on this. The seal on that was a good deal better specimen of a seal than this; it was a large and prominent seal, and this was not. This was what induced me to suggest the putting it on this.

28 int. Please look upon this paper, and say whose handwriting it is in, and what it purports to be.

(Witness is here shown a paper.)

Ans. It purports to be a deed, bearing date the 15th September, 1856. The body of the instrument is in my handwriting; it is from Liberty Bigelow, without his wife, David A. Gage and his wife, Walter S. Johnson and his wife, Frank Parmelee and his wife, grantors, to Daniel Lawrence, grantee. The signatures are genuine. I saw it signed by all but the women. I know nothing of their signature.

450 29 int. Is that the original of the deed referred to in the pleadings?

Ans. It is, sir.

30 int. Did you see Mr. Chapman when you were in Boston?

Ans. I was not introduced to him. I saw a gentleman at work in the corner of the room, and heard him called Chapman. I should not know him if I saw him.

31 int. Were you knowing to where Mr. Chapman was about the 30th of December last, or at any time subsequent thereto?

Ans. I was informed by letter that he was in Boston. I have no other information than that.

32 int. From whom was the letter?

Ans. From Mr. Bigelow.

33 int. Look upon these pages. State what they are, who drew
451 them, and whether you ever served them upon counsel or upon Mr. Lawrence; and, if so, when.

Ans. I drew them. I think these are the identical papers I served upon Mr. Gregory, attorney for Mr. Lawrence. They are the notice and interrogatories served on 30th December, 1864, for a commission to take deposition of H. T. G. Chapman. The papers shown witness are marked "Exhibit C" and "Exhibit D."

34 int. Were there cross-interrogatories filed, pursuant to that notice, in behalf of Mr. Lawrence?

Ans. I do not know, sir. The commission was taken out by Mr. Jackson, and I never looked to see what was attached to it.

35 int. Were you served previously to the expiration of that notice with what purported to be a copy of cross-interrogatories for such deposition?

Ans. Constructively I was. I found a copy on my table. I
452 never knew how they came there.

36 int. Please state where that commission for Chapman's deposition now is, and whether it was ever sent to the commissioner to be executed?

Ans. The last I saw of a package of papers purporting to be that commission was in my office, where I presume it now is, having directed it not to be sent, and where it is likely to remain.

Direct examination resumed:

1 int. Will you state why you did not send off that commission to take Chapman's deposition?

(Objected to by Mr. Kales.)

Ans. Because I received notice on the 9th day of January that Mr. Chapman had been tampered with, and had been induced to make an ex-parte affidavit by Mr. Lawrence's attorney.

Cross-examination resumed:

453 1 int. Were you so informed by your client, Mr. Bigelow?

Ans. I was.

2 int. Have you not been personally informed by Mr. Bigelow, within the past few days, that Mr. Chapman had furnished him with a copy of the affidavit referred to, or have you not seen what purported to be a copy of such affidavit, or been informed by Mr. Bigelow in some manner that Chapman would not testify that "Exhibit A" was sealed when Lawrence executed it, or that the same was sealed after Mr. Lawrence had signed it?

Ans. I was informed by Mr. Bigelow when he was here that, having heard that Chapman had made an ex-parte affidavit, that he could not believe he had made it; and he went to him, and coaxed out of him to see a copy of it which he had kept; that he made a copy of that copy,

454 but did not bring it with him. I consequently never saw a copy or what purported to be a copy of Chapman's affidavit. I have not been informed by Bigelow that Chapman would not testify that "Exhibit A" was sealed when Lawrence executed it.

Direct examination resumed:

1 int. State what Bigelow did say.

(Objected to by Mr. Kales.)

Int. What did Bigelow say in relation to this ex-parte affidavit, and Chapman's testimony in connection with it.

(Objected to by Mr. Kales.)

Int. State all the conversation you had with Mr. Bigelow on the occasion referred to in the preceeding interrogatories.

(Objected to by Mr. Kales.

Interrogatory withdrawn.)

Cross-examination resumed:

1 int. I will call your attention to the articles of agreement attached to the original bill, dated 15th Sept., 1856, between Daniel Lawrence,

455 Liberty Bigelow, Walter S. Johnson, David A. Gage, and Franklin Parmelee; also to a deed of the same date, being the same deed shown you during this examination; and also the instrument purporting to be a bond of the same date from Liberty Bigelow, David A. Gage, Walter S. Johnson, and Franklin Parmelee to Daniel Lawrence, referred to in answer to cross-bill as "Exhibit G," and will you please state by whom the said instruments were drafted, and where?

Ans. The body of said several instruments is in my handwriting, drawn by me here in Chicago.

2 int. In what capacity were you acting, and for whom, in the preparation of those instruments?

Ans. I was acting in the capacity of attorney and counsel for F. Parmelee & Co., composed of Parmelee, Bigelow, Gage, and Johnson.

3 int. Where was Daniel Lawrence?

456 Ans. He was doing business in Medford, Massachusetts, and, I suppose, lived there. The papers were drafted here, and sent there to him before being executed. He was not present in Chicago; but I was directed by Mr. Bigelow to draw them according to what he stated to be the agreement, and they were forwarded to Daniel Lawrence before being executed.

4 int. Do you or do you not know from Mr. Bigelow whether he was mainly instrumental in procuring Daniel Lawrence to advance or pay the sum of fifty thousand dollars to F. Parmelee & Co., and in procuring him to receive the deed executed by them to Lawrence.

Ans. I can only answer that question indirectly. The commencement of that transaction was the first of my acquaintance with Mr. Bigelow, and it was two years after that time before I knew anything about it, and supposed he was borrowing the money of a stranger, as much as anybody.

5 int. Which member of F. Parmelee & Co. was mainly instru-
457 mental in obtaining the fifty thousand dollars, or in negotiating for it from Daniel Lawrence?

Ans. Two of those members were mainly instrumental in the enterprise of erecting the Garrett Block building, viz: Gage and Parmelee. The negotiation of the money for the money was, as I understood it, made by Mr. Bigelow.

6 int. State if you know whether Mr. Bigelow is not a man of much beyond the ordinary capacity of men, and describe him as a man of business capacity as you have known him since 1856.

Ans. Mr. Bigelow is a man of very excellent common sense; extremely cautious and careful as to all his business matters; has lost the opportunity of making two large fortunes by being too cautious.

Direct examination resumed:

1 int. What do you say as to the business capacity of Daniel Law-
458 rence?

Ans. I can only speak of him from reputation. I know what his reputation is as a business man, but do not know it personally. He is reputed to be a man of very great business capacity, and has accumulated a large fortune.

2 int. Did you see Daniel Lawrence in the summer of 1863?

Ans. I did.

3 int. Did you have any interview with him?

Ans. I had some conversation with him.

4 int. How did he then appear in point of health and mental vigor?

Ans. He appeared to be in excellent health, and a very vigorous and resolute old gentleman. I speak of him both mentally and physically.

5 int. How long after this deed and contract were sent to Lawrence, as you have stated, before the papers were returned with the contract executed by Lawrence?

459 Ans. The papers were drawn at the time they bear date. They were forwarded immediately; and it was from three to four weeks after that before they were returned here and the contract executed.

6 int. Was there a bond or instrument providing for two per cent. additional?

Ans. There was. That was the way the two per cent. was provided for.

7 int. Have you that bond with you?

Ans. I have.

8 int. Was the bond last mentioned drawn at the same time the other papers were drawn, and was it forwarded and executed at the same time the other papers were forwarded and executed?

Ans. It was drawn at the same time of the other papers, and forwarded at the same time to Mr. Lawrence with the other papers. It was
460 returned with directions that it was satisfactory, and that it should be executed and put on record here. The deed and bond

were executed at the same time. These articles of agreement were executed in Boston at an earlier date than the bond and deed by Mr. Lawrence, and sent here and delivered.

9 int. Will you state when the notes mentioned in the bond above referred to were executed and delivered?

Ans. I don't know, except from the notes that have been paid, returned, and taken up, which I have in my possession.

Cross-examination resumed:

1 int. Do you know of your own knowledge whether Mr. Lawrence ever received the two per cent. bond into his possession before or after it was signed by the parties whose signature appear thereto?

Ans. Not positively and of my own knowledge.

Int. From whence did you obtain the original bond to be
461 used as evidence in this case, and from whom?

Ans. When the papers were recorded in the recorder's office they were all brought away; that is, the articles of agreement and papers which belong to the parties here. Mr. Parker, I think, by mistake, also brought the two per cent. bond. Mr. Lawrence never having called for it, it laid there ever since in the office of F. Parmelee & Co., with the articles of agreement, until I took them when this suit was commenced.

Int. Do you know of your own knowledge that the notes of five hundred dollars, to which you have referred, are the same notes referred to in [in] the two per cent. bond?

Ans. I do not.

Direct examination resumed:

1 int. State the facts within your knowledge relating to the possession of the two per cent. bond by Daniel Lawrence, and under whose direction it was recorded.

(Objected to by Mr. Kales.)

462 Ans. After the papers were forwarded to Mr. Lawrence, as I have stated, including this bond, they were returned to Mr. Bigelow, who was acting for him here, together in one package, accompanied by a letter. I superintended the execution of the deed and bond, and then, at the request of Mr. Bigelow, went with him to the recorder's office, and left them there for record.

W. K. McALLISTER.

Subscribed and sworn to before me this 20th day of January, 1865.
THO'S B. CARTER, *Clerk.*

Charles A. Gregory, a witness produced and sworn on behalf of defendant in original bill and complainant in cross-bill, deposes and says:

Do you know the parties complainant and defendant in this cause; and how long have you known them respectively?

I know all the parties to this suit except Mr. Johnson and wife,
463 and the wife of Mr. Parmelee and Mrs. Bigelow. I have known Bigelow since the spring of 1857. I have known Lawrence since about 1st August, 1863; have been acquainted with some of his family, long previous to that, intimately. Mr. Gage and Parmelee I have known for several years. My acquaintance with Parmelee is slight.

State if you know the age of Mr. Lawrence—Mr. Daniel Lawrence—and state what his relations in the way of business have been, since you knew him, with Mr. Bigelow.

Daniel Lawrence is about sixty-nine years of age; his relations with Mr. Bigelow have been intimate and friendly and confidential; I speak of nothing since September or October, 1864. I don't know how they are now.

Do you remember of an interview which you had with Mr. Bigelow, at your office, in Chicago, in July, 1864? And, if so, state the time as near as you can, and what took place at that interview in relation
464 to the matters then in controversy in this suit.

(Objected to by complainant so far as relates to what was said on that occasion.)

Ans. In July, 1864, Mr. Bigelow called upon me at my office in Chicago. We had a conversation together on matters relating to this suit, and upon other matters of business. In this conversation I said to Mr. Bigelow: "You ought, at least, to pay your proportion of the debt due to Daniel Lawrence on account of your relationship with him." He said: "I would, but I don't know that I could do it in such a way that I could be thoroughly protected; for if he should release one of us joint debtors it would be a release of all." That was rather in the tone of an interrogatory. I told him there was no difficulty about it; that he could pay his proportion with safety to himself and Mr. Lawrence. I told him that Lawrence could not give him a technical release under seal, but that an agreement could be drawn up, or a receipt given, that
465 would answer the purpose perfectly. He said if that could be done he did'nt know but that he would pay it. I offered to draw a paper. He told me I need not; he would think about it. I have not stated the exact words of the conversation, but I have stated precisely the import of it; it lasted some time, and I clearly informed Bigelow of the effect of a release of one of several joint debtors, and that the purpose he desired could be accomplished by a proper writing without detriment to either of the parties.

Look upon this paper, marked Exhibit B, referred to in the testimony of Mr. Phillips. State when you first saw it, from whom you obtained it, and whether, so far as the writing of the body of it is concerned, it is in the same condition as when you first saw it.

Ans. I first saw this paper in Boston, in October, 1864; I obtained it from the hand of Daniel Lawrence, as a copy of the release which was pleaded in this case; it appears the same as I then saw it in Bos-
466 ton, in the body of it; except the exhibit marks upon it, it is precisely the same as I then saw it.

Int. Do you remember of Liberty Bigelow being in Chicago in the fall of 1864, some time in October, and of his testifying in this case at the office of Ira Scott, master? And, if so, state whether you then and there had any interview with him touching the release contained in the supplemental bill; whether he then showed to you any and what instrument of writing; and state all that took place relating to the matters in controversy in this suit.

Ans. On the 5th of October, 1864, I was present at Ira Scott's office; Liberty Bigelow was there at the same time. I think he had been sent for at my request for the purposes of cross-examination. I asked him then to let me see the paper he called a receipt that he got of Daniel Lawrence. He took a paper out of his pocket and handed it to me. The paper was the same shown in evidence here as the original release, and he remarked to me, as he handed it to me, smiling, about in
467 these words: "That is a pretty good receipt, ain't it?" I said: "If this is a receipt merely, why have you pleaded it in this case as a release of all the parties?" His answer was: "I don't plead noth-

ing about it; the paper speaks for itself." At the same time he showed me another paper, in his own handwriting, which I read over, I think. I hastily compared the two. That paper—

(Here witness is stopped by objection from Beckwith to statement of contents of paper which Bigelow showed him, there having been no notice to produce it.)

(Witness proceeds:)—he said was the one he drew up for Mr. Lawrence to sign. I took it into my hand and looked at it; it was the first intimation I had of these papers, except in the pleadings. It bore a seal on the right-hand side, near the proper place for a signature; it was dated August 1st, 1864. I think that was the first line, and all that was written on that line in the upper right-hand corner. He stated,

468 "It is like the other, only it hasn't the last clause in it." "Mr. Lawrence insisted upon that clause," he said. I asked Mr. Bigelow: "Didn't you draw this paper under the advice of counsel," or "of your counsel." Mr. McAllister sat within a few feet of us during this conversation. He said: "No, I didn't have counsel." I turned to Mr. McAllister, and said: "Were you not in Boston when this release was drawn?" His reply was: "I was in Boston, but not present at any of the interviews of the parties." I didn't pursue the subject any further. I handed the papers back to him, and that was the end of it.

(Beckwith move court to strike out so much of the testimony as refers to the date of the instrument.)

(Witness says:) I desire to correct my testimony. I think now the date of the paper was August 9th, and not August 1st, as I have above stated.

(And thereupon Beckwith waives the objection.)

Int. Do you know the location and place where Mr. Daniel Lawrenc
is said to have executed the instrument marked Exhibit A
469 Number 82 Washington street? And, if so, describe the room, and whether it is a light or dark room.

Ans. I know the place very well; I have been by it a great many times; I have been into the office; it faces towards the west, or in a westwardly direction. It is not a high studded room; is on the ground floor; Mr. Bigelow's desk towards the back part of the room. When I went into the office it struck me as a dark room. I have looked in at the windows—I did in October, to see if Mr. Bigelow was there, and saw him sitting at a desk towards the rear of the room. I think there are no lights in the rear; if there are they must admit but very little light, for I had to look carefully to see and distinguish the parties at the back of the room. I didn't observe whether there were any light there or not; otherwise it was rather dark—not a light room. I am informed that there were lights there, but have no recollection about except what I have stated

470 Int. Do you know whether Mr. Lawrence's eyesight is good or otherwise?

Ans. He carries spectacles with him in a box; I have seen him take them out and put them on when reading; I have no other knowledge about it.

Int. Do you recollect, after the serving of the cross-interrogatories, to take the deposition of Mr. Chapman, of being informed by Mr. McAllister as to why he did not cause the deposition to be taken?

(Objected to by Beckwith. Defendants' counsel says that he asks this question to explain the reason why Chapman's testimony was not taken by defendants. Objection sustained by the court.

Defendants' counsel states that he expects to prove by the witness

that he, McAllister, expected to have Mr. Chapman here upon the hearing of this cause.)

Int. I wish you to describe Mr. Lawrence, as to his health and
471 as to his present business capacity, so far as you know of it; and as it was shortly after the middle of August, 1864, and previously; and also his character, as to whether he is a man confiding in his business, so far as you know anything of it.

(Objected to by Mr. Beckwith.

Defendant says he offers this testimony to prove the allegation that Lawrence did not know that the instrument was sealed when he signed it. Objection overruled by court.)

Ans. I can't say much about it; he is a man of dim eyesight; I have no doubt of it from my own observation of him. If you inquire as to his relations of confidence between himself and Mr. Bigelow, I can tell you what I know of it.

Int. Should you say, from what you know of his physical and mental condition, that he might or might not have signed the release, so called, within the room 82 Washington street, Boston, without knowing that the seal purporting to be affixed thereto was on the said
472 instrument?

(Objected to by Mr. Beckwith as being a mere matter of opinion. Objection sustained by court.)

Cross-examination:

Int. Was Mr. Scott and Mr. McAllister present when you had the conversation with Mr. Bigelow in Mr. Scott's office?

Ans. They were present. I think Mr. Scott was sitting at the table; my conversation was directly with Mr. Bigelow. Mr. Scott was there, and was not far off from me.

Int. Had you any opportunity of examining Mr. Bigelow before the master as to the conversation you had with him?

Ans. I think there was a physical possibility of doing so; but as a lawyer I should say I had no such opportunity.

473 Int. Was the examination of Bigelow closed at that time?

Ans. The direct examination I think was closed, and the deposition signed. The cross-examination was carried to one question only, as I think; I am not sure about that, and I cannot state whether this conversation I have alluded to with him preceeded or followed such cross-examination as far as it went. My conversation with him was brief, and I did not suppose that that matter was in issue then, or that he was a competent witness. I mean to say that his competency, as I supposed, went merely to the question of usury.

Int. Had Mr. Bigelow at that time signed the cross-examination?

Ans. I could not state upon oath whether he had or not.

Int. Did Mr. Scott hear the conversation?

474 Ans. I cannot state whether he did or not.

Int. Have you made any inquiry of him to ascertain whether he did or not?

Ans. I have made no inquiry for that purpose. I may say though that I saw Mr. Scott at his office a few days ago upon other business. We incidentally alluded to this matter—not particularly to the conversation, but to the deposition of Mr. Bigelow. I have no recollection whether he heard the conversation or not from anything he stated.

CHARLES A. GREGORY.

Subscribed and sworn to before me this 21st January, 1865.

THOMAS B. CARTER, *Clerk.*

Ivers C. Phillips recalled by the complainant:

Int. Will you describe your office No. 82 Washington street, Boston, and state the means of admitting light to the same?

475 The whole front of the office is glass, with exception of the lower half of the door. The rear of the office is lighted only by glass in half of the door. The door is a double door; both of them, I should say, about 3½ to 4 feet wide, and about 7 feet high. I can't tell the exact depth of the office from front to rear—it is perhaps thirty feet; I can't say exactly. There is about room enough between the rear door and Mr. Bigelow's desk to put in an arm chair; it may be three feet; I should not say more. The shape of the room is like this precisely; not so long but the general shape the same, and the rear door about the same as the door in that partition.

Int. State whether there is an area in the rear of the office, and how long it is.

Ans. There is a passage between two buildings, between the L of the building in which the office is and the south wall of the other building, perhaps ten feet wide. I can't be exact about it—somewhere
476 from eight to ten feet; the wall on one side of this passage-way is one story high, and on the north side is some three or four stories high. The other side is merely the L of the building. The building north of our office is the one having the high wall; the passage-way is perhaps nearly the length of this room, and goes into a large back-yard of other buildings. The studding of our office is perhaps from 10 to 12 feet high; I can't say exactly; ten feet certainly, and I should say twelve.

Int. How long have you occupied the office?

Ans. Three years next month; I mean three years in March. It is on the east side of Washington street, facing westwardly, almost due west. It is three or four buildings, perhaps five, from State street.

Int. Did the door near Bigelow's desk open into the area of which you have spoken?

Ans. Yes, sir; the door swings in, and that door is the open-
477 ing into the passage-way; the area is, perhaps, 25 or 30 feet long.

Int. Will you state whether the office was, during the business hours of the day, light, and whether there was any difficulty in seeing in it?

Ans. I should call it an ordinarily light office, except in very cloudy weather. I never had any difficulty in working there except in a very cloudy day. My desk, two years ago, used to sit just where Mr. Bigelow's does. In warm weather the rear doors are usually open, as that is the only means of circulation, except in stormy weather.

To the court: Washington street there is quite narrow, perhaps 40 or 50 feet wide. The buildings opposite are two or three stories high, and I think of a dark color—is of brick, I think. Court avenue opens also directly opposite to our building.

Int. Do you recollect the character of the day on which Exhibit A was prepared—whether it was clear or otherwise?

478 Ans. No, sir; I do not.

Int. Was there any difficulty in reading the paper which was prepared as a release for Mr. Lawrence to sign when you read it?

Ans. I believe I testified once that I did not read it.

Int. Well, then, when it was prepared?

Ans. I do not recollect anything of the kind.

Int. Do you mean by your last answer that you do not recollect whether the day was clear or cloudy.

Ans. I do, sir.

Cross-examination:

Int. Do you sometimes light the gass in this office in the daytime?

Ans. On the other side of the office, away from this door, it is sometimes dark; it is occupied by other parties, and they sometimes
479 light the gas. On our side of the office, I do not remember of having to light it, except on one or two occasions, and just at night. One end of my desk sits under a counter, so that the counter shades it, and I sometimes have to light the gas there, but that is in the front part of the building.

Int. Did I understand you to say that they often light the gas on the other side of the office, in the same room?

Ans. Yes; in the rear corner.

Examination, direct, resumed:

Did you ever know an instance in the middle of a summer day that you had to light the gas in the part of the room where Bigelow's desk is?

Ans. No, sir; and there is no gas very near it anyhow.

Int. Did you ever know any difficulty in the middle of a summer's day of seeing well enough at Bigelow's desk or Chapman's desk
480 to do business?

Ans. No, sir.

IVERS C. PHILLIPS.

Subscribed and sworn to before me this 20th day January, 1865.

THOMAS B. CARTER, *Clerk.*

Deposition of H. J. G. Chapman, a witness produced and sworn on behalf of defendant Daniel Lawrence to original supplemental bill and complainant in cross-bill, on the hearing of the said cause.

1 qt. Please to state your name, age, and occupation, and places of residence and business.

Ans. My name is Henry J. G. Chapman; my age is twenty-six years; am a bookkeeper; I live in Charlestown, Massachusetts, and do business at No. 34 Kelley street, Boston.

2 qt. State where you were employed, and how you were em-
481 ployed in the month of August, 1864, and on the 12th day of that month.

Ans. At No. 82 Washington street, Boston, by the Cheshire and Rutland and Burlington corporation, as a clerk.

3 qt. State are you acquainted with Liberty Bigelow, who does business in Boston, and with Daniel Lawrence, who lives at Medford, Massachusetts; and state how long you have known them respectively.

Ans. I am acquainted with both parties; I am acquainted with Liberty Bigelow and with Daniel Lawrence. I have known Mr. Bigelow for two years, more or less, and Mr. Lawrence since the early part of October, 1864.

4 qt. State when you first saw Daniel Lawrence, and where.

Ans. On the 12th day of August, 1864, at No. 82 Washington street.

5 qt. State who was present at that time and place while Daniel Lawrence was present.

482 Ans. Liberty Bigelow, Ivers C. Phillips, and myself; possible there may have been L. D. Richardson.

6 qt. Look upon Exhibit A, being the same paper so marked attached

to deposition of Phillips in this case. State in whose handwriting this paper is; when and where you first saw it; what you know relative to its execution; what you know relative to the seal thereon, to the putting the seal thereon.

Ans. This paper is in my own handwriting. I first saw it at the time I copied it at No. 82 Washington street, Boston. It was handed to me by Mr. Bigelow, with a request that I would copy it as an accommodation to him, and it was done. The paper [which] from which I copied—

(Court says the paper is technical in its character, and has a technical meaning, which the witness may not understand. Counsel for Lawrence says that ex'n of paper refers to the signing and sealing the paper; that witness will answer the question in reference thereto.)

483 (Witness continues:)—did not contain the last clause or sentence which appears in this, viz: "Nothing herein contained shall in any waise affect my right or demand against said Parmelee, Gage, or Johnson, or their interest in said property." The day of the month was also left blank, and the sum of money.

(Court wishes to know whether this differs from the original in any other particular than the addition of the concluding clause, as above stated.)

(Witness says:) It was not signed; neither bore a revenue stamp; that is, the instrument from which I copied.

7 int. At the time you made this copy, did you leave the date blank, meaning the figures 12th; did you leave the place for the sum of money blank; and was the original from which you copied blank in these respects?

(Objected to by Smith as leading.

Objection sustained.)

8 qt. State how the original, from which you copied this paper,
484 was with respect to the date and the place for the sum of money, and how did you leave Exhibit A, upon copying the same, in those respects.

Ans. The original paper from which I copied was blank with respect to the date and the sum of money, and this "Ex. A" paper was also blank in those two respects, viz, in respect to date and sum of money until August 12th, when they were filled in.

9 qt. State from what source or paper, if any, you copied the concluding clause in Exhibit A.

Ans. From Mr. Bigelow, he receiving it from a third party. It was contained on a slip of paper, written in lead pencil. I copied it from a slip of paper. It was not dictated by any one.

10. qt. In whose handwriting was the principal paper from which you copied, and in whose handwriting was the slip of paper? And
485 state whether or no they were both handed to you at the same time, or at different times, and by whom.

Ans. The original paper was, I think, in the handwriting of Mr. Bigelow; and the slip of paper, I know, was in the handwriting of Mr. McAllister; the slip of paper was handed to me subsequent to the original; they were handed to me at different times, and by Mr. Bigelow.

11 qt. Look upon that seal on Exhibit A, and state who put it on, if you know.

Ans. I put it on myself.

12 qt. State when you put it on, if you remember, and was it before or after Daniel Lawrence had signed the paper.

Ans. I put it on in the forenoon, at the request of Mr. Bigelow, and I think after Daniel Lawrence had signed it.

13 qt. Was Daniel Lawrence present when you put it on?

Ans. He was not.

486 14 qt. State whether Daniel Lawrence had been there previously to your putting on the seal, and signed the paper. And did you see him sign it?

Ans. He had been there previous to my putting on the seal, but I did not see him sign it.

15 qt. Look at the writing upon that seal, the letters *s e a l*. State in whose handwriting it is, if you know, and under what circumstances the letters were put there.

Ans. The letters are in my own handwriting; the circumstances are these: Mr. Bigelow asked me if I would make a seal and put it on this paper. I replied that I would, and asked him whether he wished anything fancy or elaborate. He replied, no; anything would do. Whereupon I cut this seal, this paper, in this form, from a piece of an envelope, and [and] pasted it hereon, and then immediately wrote the letters *s e a l* upon it.

487 16 qt. You say you think Lawrence's signature was at that time on this paper; what makes you think so?

Ans. Because I never saw Mr. Lawrence after the day that this paper was executed, or after August 12th, until I saw him in October last, and received an introduction to him; and also having seen his signature subsequent to that date, I recognised it as having seen it before.

17 qt. Have you any recollection of ever having seen Lawrence's signature on any other paper previous to August 12th?

Ans. I have not.

18 qt. With what substance did you fasten that seal on, and from what place did you get such substance?

Ans. It was fastened on with mucilage obtained from Mr. Phillips' desk.

19 qt. Look at Exhibit B, being the paper attached to Mr. Phil-
488 lips' deposition in this case, and state in whose handwriting it is if you know; and when it was made, if you know.

Ans. It is in my handwriting, and made August 12th.

20 qt. State to whom it was given, if to any one, and where, when you got through copying it, and at whose instance was it made.

Ans. It was given to Mr. Bigelow as soon as copied. It was made at the instance of Mr. Bigelow.

21 qt. When did you next see that paper, and in whose hands?

Ans. I next saw it some time in October in the hands either of Mr. Gregory or Mr. Lawrence.

22 qt. From what did you copy that paper?

Ans. From Exhibit A.

489 23 qt. Was Daniel Lawrence present when you copied that; that is to say, at 82 Washington street, in the office?

Ans. He was; for it was copied at his request, put to me through Mr. Bigelow.

24 qt. State whether Mr. Bigelow handed that paper to Mr. Lawrence or not.

Ans. I did not see him.

25 qt. When did you next, after the 12th August, 1864, see Exhibit A, and in whose hands was it?

Ans. Some time in January, 1865; in the hands of Mr. Bigelow.

26 qt. Under what circumstances; and what took place between you and Bigelow on that occasion relative to the paper in question?

Ans. He called at my office and produced this paper after a little
490 conversation. He told me that he could prove that I never saw the paper after Mr. Lawrence signed it, and gave as a reason that it was on its way to Chicago (meaning this Exhibit A) in fifteen minutes or so after it had been signed. I replied that I was unable to tell anything about that, but that I was confident and ready to testify that the seal was put on after Mr. Lawrence had left the office. He repeated his previous assertion, and then said: "Of course, you don't mean to perjure yourself," to which I made no reply. I stated to him that I was not aware of the effect or value of a seal, either before or after I had put this one on, and that I had given my deposition in accordance with my belief in the matter, and as I had previously stated to Mr. Lawrence, Mr. Gregory, and others, and that I could not change it.

27 qt. Look upon this affidavit, and see if it is the one you informed Mr. Bigelow you had given.

(Mr. Smith objects to the affidavit being exhibited to the wit-
491 ness, and to his reading it over. The affidavit shown the witness is the one marked "Filed January 23d, 1865, T. B. Carter, cl'k," in this cause, and marked "X.")

Ans. It is.

(The above question and answer are withdrawn by counsel for Lawrence.)

28 qt. Look upon the affidavit made by you the 31st of December, 1864, and filed in this cause Jan'y 23rd, 1865, and say whether it is or is not the document which you referred to when you stated to Mr. Bigelow that you had given your deposition in this case.

Ans. It is.

29 qt. State whether you then, or at any other time, exhibited to Mr. Bigelow a copy of said affidavit or deposition, and whether you furnished the same to him at the request of any one.

(Objected to by Mr. Smith, on grounds: 1st, It is incompetent for any purpose; 2nd, on the ground that the paper exhibited to Bige-
492 low should itself be produced as the best evidence whether it is a true copy.

Court says: "Let him answer the question.")

Ans. I did furnish one voluntarily, when Mr. Bigelow expressed surprise at my having signed another paper. I told him at once, without being requested—without his request—that I would show him nearly an exact copy of what I had signed, and told him that I had carried it with me ever since, in case I wished to refer to it. I then read it over to him, he looking on, and told him where certain changes had been made by my request, and also showed him a synopsis of that testimony, as written down by a lawyer in Boston, name not known; both of which papers he wished to take and copy, to which request I at once acceded. He returned them two or three days after. I have that paper now here if you wish to see it.

30 int. Did Mr. Bigelow then state to you the object of his visit to you on that occasion; and, if so, what was it?

493 Ans. He used this language, (now comes quotation marks:)

"I have been expecting that deposition on from Chicago; probably it will be here this week."

And then he was informed that it had already been given.

31 int. To what did Mr. Bigelow refer when he said: "I have been expecting that deposition;" and had he any previous interviews with you,

and, if so, when, relative to the taking of your testimony on your behalf in this cause; and, if so, how many interviews; and what took place thereat?

Ans. I can't answer that without reversing the question and answering the last part first. Mr. Bigelow had called upon me twice and spoken about my deposition. I suppose it was that to which he referred. The time of his calls was in December last. I had hoped that I should be excused from giving testimony, because of the mutual friendship existing between Mr. Bigelow and myself, and Mr. Lawrence and
494 myself, but my first impressions and all subsequent conversations were opposite to his desires, so I forebore to tell him of it until I felt myself concientiously bound to do so at the time when I refused to sign an affidavit for him, (Lawrence.) I had not refreshed my memory with certain data which have since by thought come to my mind. The copying of these two papers was done by accommodation, not being related to him (Bigelow) in any way except that of a business acquaintance.

Court adjourned until 2½ o'clock.

Court meets pursuant to adjournment.

32 int. You have stated in substance that the figures 12th in the date, and the words twenty-two thousand five hundred fifty-seven dollars, in Exhibit A were not in the first instance when you wrote out the instrument filled in to the same. Will you now state by whom, at whose request, and when those words and figures were written in that ex-
495 hibit, and, if after you wrote the other portions of that paper, how long after; and had those words and figures been written into Exhibit A at the time you made the copy called Exhibit B?

Ans. By myself, on the 12th day of August, 1864, at the request of Mr. Bigelow, and one or three days after I had written the other portion; but the precise time I will not state certain; that is, I am uncertain how many days I was. They had been written into Exhibit A at the time I made the copy called Exhibit B, to the best of my knowledge.

Cross-examination:

1 int. I understand you to have stated that you affixed the seal to this Exhibit A in the forenoon of the 12th of August last. Am I correct in this?

Ans. You are not.

2 int. When did you affix it?

Ans. Some time afterwards.

3 int. That does not answer the question.

496 Ans. That is the best way I can answer it—that is, not on the 12th day of August, nor on any day previous, but subsequent; probably on the next day, in the forenoon and early in the forenoon—that is, before 10 o'clock.

4 int. How do you know it was the next day?

Ans. Because the transactions of the previous day were fresh in my mind.

5. What transactions of the previous day?

Ans. My transactions of filling out the date and the sum of money, and the presence of Mr. Lawrence holding conference with Mr. Bigelow for the space of nearly, if not quite, or more than, an hour, and more than that. Mr. Lawrence did not enter the office while I was present after that date, (12th of August.)

6. Are these the only reasons you have to give?

Ans. Yes; that is all.

497 7. Had the filling up the blanks occurred on the same day of the affixing the seal, wouldn't the transaction have been just as fresh in your mind?

Ans. Allow me to explain.

No, sir; answer the question.

Ans. It would.

9. Was Mr. Ivers C. Phillips present when you affixed that seal?

Ans. He was not, not having as yet entered the office.

10. Are you positive of that?

Ans. I am.

11. Was W. K. McAllister present when you affixed this seal?

Ans. He was not.

12. Are you positive of that?

Ans. I am.

498 13. Are you positive that you cut the paper out of which the seal is made?

Ans. I am.

14. What instrument did you cut it with?

Ans. A pair of shears.

15. Where did you get those shears?

Ans. They were kept for use in the office.

16. That does not answer my question; put the question again.

Ans. I might have taken them from a nail or from a desk.

17. Don't you remember on this point?

Ans. I do not.

18. What was the paper out of which you cut this seal?

Ans. A piece of an envelope, which I took from the waste-paper basket.

499 19. Where did the basket stand at the time?

Ans. I think under Mr. L. D. Richardson's desk.

20. Under whose?

Ans. Under L. D. Richardson's, the agent of the Cheshire and Rutland and Burlington roads, and the employer of Mr. Phillips and myself.

21. Don't you remember?

Ans. I do not; but that was its place.

22. What was the color of the envelope?

Ans. Buff, or whatever the color is.

23. Well, what was the color of it?

Ans. I am not a judge of colors; it was ordinary post-office paper.

24. I didn't ask about that; if you can't answer, say so.

Ans. Yellow.

500 25. What is the color of the seal on Exhibit A?

Ans. The same color.

26. What color?

Ans. The color which I have described.

27. Was the concluding clause furnished by McAllister copied into the paper the same day with the remainder of the instrument?

Ans. It was.

28. What time in the day?

Ans. Before 12 o'clock.

29. How do you know?

Ans. I took my dinner afterwards, which I never do before 12 o'clock, and Mr. Bigelow himself usually leaving town at that hour.

30. Are you positive that you never saw Daniel Lawrence prior to August 12th last?

501 Ans. I am not positive that I never saw him; but, if I did, I did not know who he was.

31. Did you ever see him prior to that date at this office, No. 82 Washington street, Boston?

Ans. I do not recollect that I ever did.

32. At what hour of the day did he first enter this office, on this 12th August last?

Ans. About 11 o'clock, as near as I am able to remember.

33. Who was present at the time?

Ans. Mr. Bigelow, Mr. Phillips, and myself.

34. At what hour did he leave the office on that day?

Ans. Shortly before 12 o'clock.

35. In whose company did he leave the office.

Ans. In Mr. Bigelow's, I think.

36. Did you see this Exhibit A, on the 12th of August, while Lawrence was in the office?

502 Ans. I did.

37. In whose possession did you first see it that day while Lawrence was there?

Ans. In Mr. Bigelow's possession.

38. Did he produce it?

Ans. He did.

39. Did he show it to Lawrence?

Ans. I did not see him do so.

40. Did you see Lawrence have it that day in his hands?

Ans. I did not, but saw it lying on the desk before him.

41. Before whom?

Ans. Mr. Lawrence.

42. Whose desk?

Ans. Mr. Bigelow's.

43. Did Lawrence read it?

Ans. I believe he did.

44. Did he read it aloud?

Ans. I did not hear him.

45. Did you see Lawrence sign it?

Ans. I did not.

46. Do you know that he signed it that day.

503 Ans. I am not able to say that I know, because I didn't see him sign it.

47. Who affixed the revenue stamp?

Ans. I do not know.

48. Who cancelled it?

Ans. I do not know.

49. On what day was the revenue stamp affixed?

Ans. It must have been——

50. I want facts. If you know, say so; on what day was the revenue stamp affixed?

Ans. I do not know.

51. Was it affixed before or after the seal was affixed?

Ans. I think it was affixed before.

52. Do you know?

Ans. I cannot say that I know.

53. Between the time you affixed this seal and the time Mr. Bigelow showed you this Exhibit A, did you see this instrument?

Ans. I did not.

54. At what date did you say Bigelow showed it to you?

Ans. In the early part of January, 1865.

55. Before Bigelow showed you this paper, in January, had you ever seen Daniel Lawrence' signature?

504 Ans. I had.

56. To what instrument?

Ans. To a check.

57. To any other instrument?

Ans. I cannot say that I know I had.

58. When and where did you see his signature to a check?

Ans. In the latter part of December, 1864, or the first part of January, 1865, in my counting-room in Boston.

59. Well, which date was it?

Ans. I do not know which.

60. Well, which date, according to the best of your recollection?

Ans. I cannot say. I think it was in the early part of January, but I am not sure of that either.

61. Is that the only time you have seen his signature?

Ans. I cannot say.

62. How long had you been in this office, No. 82 Washington street, Boston, prior to the 12th of August last?

Ans. A little more than six months.

63. Wasn't Lawrence in there frequently during that time?

Ans. I do not know that he was.

505 64. Havn't you seen him writing frequently prior to that time at Phillips' desk, and stationary furnished him by Phillips?

Ans. He never did, to my knowledge.

65. Will you look at the inky blot on this Exhibit A, and state whether you discover a partial erasure of that plot?

Ans. I do.

66. Who made such partial erasure?

Ans. I did myself.

67. When?

Ans. I do not know. Stop a minute.

68. Why can't you tell when as well as when you put on the seal?

Ans. Because I have no other facts to associate with it.

69. Havn't you the same facts to associate with the act of erasure as you have in relation to the act of affixing the seal?

Ans. I have not.

70. Why not?

Ans. Because the seal was affixed before I had that morning done a great deal of business; whereas the blot may have been done at some time when I was very busy.

506 71. Can't you tell whether the erasure of the blot was before or after you had done a good deal of business?

Ans. I cannot tell, not knowing when the blot was made.

72. Have I asked you when the blot was made?

Ans. I believe you have.

73. How?

Ans. Believe you have.

74. I now ask you when the partial erasure of the blot was made; now, do you understand it?

Ans. I believe the partial erasure was made very soon after the blot was made, as that would be the most sensible time of doing it.

75. When was that?

Ans. I do not know.

76. Who was present when that partial erasure was made in the office?

Ans. I do not know.

77. Was that partial erasure made before or after Lawrence's signature to the paper?

Ans. I think before.

78. Was it before or after the affixing the seal?

507 Ans. It was before.

79. How do you know?

Ans. I remember of seeing the blot on the paper when the seal was affixed, and also recollect the act of erasure—of partial erasure—which was certainly done before the seal was put on.

80. Was it on the same day that the seal was put on?

Ans. It was not.

81. On what day was it there; on what day of the month was the erasure?

Ans. I cannot tell.

82. Was Lawrence in that office on more than one day upon this business between him and Bigelow, to your knowledge, last August?

Ans. I recollect of seeing him there only on one day.

83. Do you recollect upon what day you made this affidavit alluded to by Mr. Kales?

Ans. Will you please tell me which affidavit?

84. There is but one affidavit alluded to by Mr. Kales. The question is definite enough.

508 Ans. If you meet that paper which counsel holds in his hands and which bears my signature, I do.

85. Well, what day?

Ans. On the 30th day of December, 1864.

86. Well, sir, was it before or after the making of this affidavit that you saw Lawrence's signature to a check?

Ans. I think it was before.

87. You have stated that that part of the original from which you copied this Exhibit A, down to the concluding clause furnished by McAllister, was in the handwriting of Mr. Bigelow; will you now state whether this part in Bigelow's handwriting had a seal affixed at the end of it?

Ans. I have stated that I thought or believed that that was in the handwriting of Mr. Bigelow; I did not positively affirm it, and I am unable to say whether it bore a seal or not at the time that I copied Exhibit A.

88. Who was present when you copied this part in Bigelow's handwriting into Exhibit A?

509 Ans. Mr. Bigelow, Mr. McAllister, and myself.

89. Who was present when you copied that part furnished by McAllister in pencil mark into Exhibit A?

Ans. The same parties.

90. How long after you copied in that part furnished by McAllister was it that you affixed the seal?

Ans. It was as long a time as it was from the time I copied that part which I suppose to have been written by Mr. Bigelow.

91. How long was that?

Ans. One, two, or three days afterwards.

92. Was not McAllister in this office, No. 82 Washington street, Boston, on the 12th of August last?

Ans. I do not recollect.

93. What is your best recollection on that subject?

510 Ans. I have no recollection.

94. Was not McAllister present in this office when the clause furnished by him in pencil mark was copied into Exhibit A?

Ans. He was.

95. Was not that clause copied in on the 12th August last?

Ans. It was not.

96. On what day was it copied in?

Ans. One, two, or three days before that time, when and at the same time the other part of the document was copied.

97. I understand you, then, to say that that part supposed to be in the handwriting of Bigelow, and that part furnished by McAllister in pencil mark, were copied into Exhibit A on the same day and on the same occasion. Am I correct?

Ans. I have so before stated, and repeat it.

511 98. Was not Ivers C. Phillips present in this office when you affixed this seal to Exhibit A?

Ans. He was not.

99. Did you not affix this seal at your own desk in that office?

Ans. I do not recollect.

100. Do you not recollect at what part of the office you affixed this seal?

Ans. I do not recollect it, whether it was at my desk or at another one.

101. Did not Ivers C. Phillips cut this seal which is affixed to Exhibit A, and pass or hand it to you; and did you not take it from him and affix it to this instrument; and did he not stand behind you while you were so affixing it?

Ans. He did not; neither was he present.

102. Are you positive as to this?

512 I am.

103. Is there no chance for you to be mistaken?

Ans. There is none on this point.

104. Are you positive that Ivers C. Phillips did not cut this paper seal in the diamond shape in which it now appears upon Exhibit A?

Ans. I am positive that he did not.

105. Is there no possibility of your being mistaken upon this point in your evidence?

Ans. There is none.

106. Are you positive that Ivers C. Phillips was not present, and did not see you affix this seal to Exhibit A?

Ans. I am.

107. Is there no chance for you to be mistaken upon this point in your evidence?

Ans. I can repeat what I have said, that Phillips was not present.

513 108. I wish you to answer my question.

Ans. I can repeat what I have said, and say that Phillips was not present.

109. Is there no chance for you to be mistaken upon this point in your evidence?

(Objected to by Kales on the ground that the question of chances is entirely irrelevant to the issues in this case.

Question waived by Smith.)

110. May you not possibly be mistaken upon this branch of your evidence?

Ans. I believe I am not mistaken.

111. I didn't ask whether you [you] believed you were not mistaken. I asked you whether there was any possibility of your being mistaken?

(Objected to by Kales on grounds, 1st, the witness has already substantially answered the question; 2nd, because the question as to
514 what is or is not possible has nothing to do with this case.

Objection sustained.)

112. Where was Phillips when you affixed this seal?

Ans. I do not know.

113. Was he in this office at the time?

Ans. I can only repeat, and say that he was not.

114. Did you cut and affix any seals to any other instruments drawn up by Bigelow, or presented to you by him, relating to this business between him and Lawrence, which instruments were discarded and not used by the parties?

Ans. I did not.

115. In the 12th direct interrogatory you are asked to state if you remember whether this seal was put on this Exhibit A before or
515 after Daniel Lawrence had signed the paper, to which you answered: "I put it on in the forenoon, at the request of Mr. Bigelow, and I think after Daniel Lawrence had signed it." Now, are you able to swear positively that Daniel Lawrence had signed this paper before you affixed this seal?

Ans. I have given my reasons why I gave such testimony, and I am unable, unwilling, unable positively, so to swear, though, having seen his signature since that time, its appearance at once struck me as familiar.

116. When and where was it that you were introduced to Daniel Lawrence after this 12th day of August last?

Ans. Some time in October last, at No. 34 Kelley street, Boston.

117. Who introduced you to him?

Ans. He first introduced himself, then his friend, which latter introduced Mr. Lawrence to me personally.

516 118. Who was this friend?

Ans. Mr. Gregory.

119. Charles A. Gregory, the solicitor for Mr. Lawrence?

Ans. Mr. C. A. Gregory; yes, sir.

120. Did you, on that day, go anywhere with Gregory and Lawrence, or either of them?

Ans. I did not.

121. Did they, on that day, or either of them, present you with an affidavit or written statement in relation to this Exhibit A?

Ans. They did not.

122. Did they, or either of them, do this upon any subsequent day or anybody else, on Lawrence's behalf?

Ans. They did not, but another party did.

123. Who?

Ans. Mr. Samuel C. Lawrence.

517 124. Were you requested to swear to the paper produced by Samuel C. Lawrence?

Ans. I was.

125. Did you do it?

Ans. I did not.

126. Do you know what became of this paper afterwards?

Ans. I do not.

127. When was it that Samuel Lawrence presented you this paper?

Ans. I am in an error; Mr. Samuel C. Lawrence did not present me with

that paper. I have mistaken him for another gentleman. It is all correct, except the name.

128. State who the man was, and where.

Ans. Mr. Robert Treat Paine. At the office of the commissioner. I am unable to state the date or time. I can't say whether
518 it was in November or December.

129. What was this Robert Treat Paine's business at the time?

Ans. I do not know, any further than his making the request to obtain my testimony.

130. Who introduced Paine to you?

Ans. We never had an introduction.

131. How did he come to know you?

Ans. He came into the store and inquired for me, and was shown into my counting-room.

132. What became of this paper which Paine presented you?

Ans. I do not know what he did with it.

133. Was Samuel Lawrence present when he presented the paper?

Ans. He was not.

519 134. What business were you following at No. 34 Kelley street, Boston?

Ans. I was following the business of a bookkeeper.

135. For who?

Ans. For the Whipple File Manufacturing Company.

136. In your direct examination you speak of your friendship for Daniel Lawrence, that induced you to keep something back from Bigelow; out of what did this friendship for Lawrence grow?

Ans. This good feeling was engendered by my previous knowledge of him. I mean Samuel C. Lawrence; that is the one to whom I referred in my previous answer in my direct examination, having known him by reputation for a year or two, and being a man whom I considered entitled to my respect and regard, on account of what I knew of his previous actions.

520 137. Did you only know Samuel C. Lawrence by reputation?

Ans. I knew Samuel C. Lawrence by reputation and by sight long before I knew him personally.

138. How long have you known him personally.

Ans. Since I have known of this matter.

139. This controversy, I suppose?

Ans. Yes, sir.

140. Samuel has been quite friendly to you since this controversy arose, hasn't he?

Ans. I shall first request to know the definition of those two words, quite friendly, in order to know what this counsel means by quite friendly.

141. Is that all the answer you have to make.

Ans. Yes, sir.

521 142. Did you seek out Samuel's acquaintance, or did he seek out yours?

Ans. I sought his at one time and failed to obtain it; afterwards, under more favorable circumstances, he sought mine.

143. What was the date of this mutual seeking?

Ans. The seeking was not mutual, it having occurred some months apart.

144. Give the dates.

Ans. Mine, in July or August; and his, since that time.

145. Give the date of his, and save another question.

Ans. I don't know, perhaps in November or December.

146. Is Samuel C. Lawrence a son of Daniel Lawrence?

Ans. I believe he is.

522 147. How old a man is Samuel?

Ans. I judge from thirty-two to thirty-eight years of age.

148. At whose suggestion or request did you sign and swear to the affidavit dated December 30th, 1864, of which you have before spoken?

Ans. At the request of Mr. Lawrence.

149. Of which Lawrence?

Ans. Of Samuel C. Lawrence, and in accordance with my own convictions.

150. Who prepared this affidavit for your signature and oath?

Ans. I do not know.

151. Didn't you see the affidavit prepared?

Ans. I should like to know what the counsel means by pre-

523 pared. If he means that I saw it written, I can say no. I saw the—— If I could look at the paper I could tell; being unable to look at the paper, I can't tell what I did see, any more than to say that I saw the seal affixed, the revenue stamp put on and cancelled upon that affidavit, it being nearly all written when I entered the office of the commissioner.

152. Who was present when you swore to it?

Ans. Mr. Robert Treat Paine, Mr. Samuel C. Lawrence, and the gentleman who furnished the affidavit.

153. Was anybody else present?

Ans. No one else.

154. When did you leave Boston to come here and testify in this case?

Ans. On Friday last.

155. At whose request and at whose expense did you come?

524 Ans. At the request of Mr. Samuel C. Lawrence, and not at my own expence.

156. I observe in answer to the 30th direct interrogatory that you assume to give the exact words of Bigelow, directing the clerk to put the words in quotation marks. Will you state whether this or any other part of your direct examination had been written down by you and committed to memory before swearing.

Ans. I have never written any words or any language which I have heard from any party respecting this case, neither have I recorded any part or the whole of my actions in the matter.

Direct examination resumed:

33 int. Did you state the facts contained in that affidavit to any one previous to its preparation?

Ans. I did; to Mr. Gregory, Mr. Daniel Lawrence, Mr. Samuel

525 C. Lawrence, and two or three others, whose names I can call.

34. Was it or not read to you before you signed it and swore to it?

Ans. It was.

35. Did you cause the blot on Exhibit A; if not, who did, if you know?

Ans. I think that I did, but I am not certain.

36. You speak of seeing the signature of Daniel Lawrence on a check; will you state the circumstances under which you saw it, and why the check was shown to you?

Ans. I will. Samuel C. Lawrence and myself were conversing on this

matter, and I asked him if it was possible, or if here was any way by which I could see Mr. Daniel Lawrence's signature, telling him at the time that I thought I should be able to detect a counterfeit from the genuine, and asking him if he could procure one, at the same
526 time trying to show him my idea of it with my pen. Some days after that I was enabled to see one; it was shown to me.

37 int. I what way?

Ans. At the hands of Mr. Samuel C. Lawrence; and I then told him that the signature looked as I had expected to see it.

38 int. Upon what was based your recollection of his supposed genuine signature?

Ans. My impression or notion that I had seen his signature upon that Exhibit A, although I was not able positively to testify that I had.

39 int. Has Samuel C. Lawrence any and what official rank or reputation?

Ans. He is brigadier general in the Massachusetts militia service.

40 int. Has he served in the war?

Ans. He has.

Cross-examination:

527 157. Any honorable scars?

Ans. No dishonorable ones.

158. Is he in the service now?

Ans. No.

By the court:

He states that the word "seal," on the yellow seal, are in his handwriting. I wish to know whether he makes this statement from recollection or from his knowledge of his signature, or from which, or both?

Witness says:

Ans. I am not so foolish as to testify to my own execution of letters like these, for nearly every one might print in nearly the same manner, but I have a distinct recollection of writing these letters, and also the position I was in when writing them, as well as knowing, as well I can, that that is the work of my hand; when I wrote it I was standing, leaning over on a sitting desk.

528 By court:

Are you acquainted with the handwriting of Mr. Bigelow?

Ans. I am not so well acquainted with it as to be able in every case to identify it.

What do you say to the word "seal" there, whether it is in his handwriting or not; from your knowledge of his handwriting, would you judge that to be in his handwriting or not?

Ans. I should judge that it is not.

Int. If this word "seal" had been presented to you independent of any knowledge of the paper, and you had been asked whether in your opinion it was in the handwriting of Bigelow, what would have been your answer?

Ans. I should most certainly say it was not.

By Mr. Kales—direct examination:

529 41 int. You have stated that you saw a check shown you with Mr. Lawrence's signature upon it; state whether that check was given to you or not, or whether you had any interest in it or not.

Ans. The check was several months old; had been presented and paid, no part of the money accruing to my benefit.

By Mr. Smith—cross-examination:

159. Was this word "seal" written upon this diamond-shaped paper seal before or after it was affixed to the Exhibit A?

Ans. It was written immediately after.

160. Upon the same day?

Ans. Upon the same day, within ten seconds.

H. T. G. CHAPMAN.

Subscribed and sworn to before me this 25th day of January, 1865.

THO'S B. CARTER, *Clerk.*

530 COUNTY OF COOK, *ss:*

I, the undersigned, before whom this cause was heard, do certify that the foregoing evidence of Sanford B. Perry, Ivers C. Phillips, W. K. McAllister, H. T. G. Chapman, and Charles A. Gregory was taken in open court on the hearing of this cause and then and there reduced to writing in form aforesaid by the clerk of this court, and was considered by the court in the decision of this cause.

Signed and sealed this 12th day of January, A. D. 1866, at the time of entering decree in this cause.

JOHN M. WILSON, [SEAL.]
C. J. Superior Court of Chicago.

And afterwards, to wit, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight, came the said Bigelow, Gage, and Parmelee, by their solicitors, and filed in the
531 office of the clerk of said court their certain motion in writing to discontinue the said original and supplemental bills of said complainants; which said motion is in the words and figures following, to wit:

Superior court of Chicago, in chancery.

LIBERTY BIGELOW, DAVID A. GAGE, AND FRANKLIN PARMELEE *vs.* DANIEL LAWRENCE.	Original bill, filed Aug. 4, 1863.
DAVID A. GAGE, LIBERTY BIGELOW, AND FRANKLIN PARMELEE *v.* DANIEL LAWRENCE	Supplemental bill, filed Sept. 24, 1864.

And now on this day came the said Liberty Bigelow, David A. Gage, and Franklin Parmelee, the complainants named in said original bill of complaint, and also complainants in the said supplemental bill of complaint named, by their solicitors, Messrs. C. Beckwith and Sid-
532 ney Smith, and now here suggest and cause the court to know that they, the said Bigelow, Gage, and Parmelee, and each of them, from henceforth decline further to prosecute their said original bill herein, and also from henceforth decline to prosecute their said supplemental bill of complaint filed herein. And they, the said complainants, by their said solicitors, hereby make known to the court that they are willing and desire that the said original and supplemental bills of complaint be dismissed out of this court, for want of prosecution, but without prejudice.

And thereupon, and upon the suggestion aforesaid, the said complain-

ants move the court to enter herein an order or orders of dismissal of said original and supplemental bills of complaint at the costs of said complainants, but without prejudice, nevertheless, to them, the said complainants, and without prejudice to the further maintenance by said Daniel Lawrence of his cross-bill of complaint, so called, filed
533 herein against them, the said complainants and their wives, together with one Walter S. Johnson and his wife, who are therein named as defendants.

C. BECKWITH & SIDNEY SMITH,
Solicitors, and of Counsel for said Defendants.

And afterwards, to wit, on the seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, the same being one of the days of the June term of said court, the following among other proceedings were had in said court and entered of record, to wit:

LIBERTY BIGELOW, DAVID A. GAGE, AND FRANKLIN PARMELEE *vs.* DANIEL LAWRENCE.	Bill.
534 DANIEL LAWRENCE *vs.* LIBERTY BIGELOW, AND HARRIET A. BIGELOW, his wife; David A. Gage, and Eliza A. Gage, his wife; Walter S. Johnson, and Electa M. Johnson, his wife; and Franklin Parmelee, & Adaline Parmelee, his wife, deceased during the pendency of this suit.	Cross-bill.
DAVID A. GAGE, LIBERTY BIGELOW, AND FRANKLIN PARMELEE *vs.* DANIEL LAWRENCE.	Supplemental bill.

And now on this day again come the parties to this cause, by their solicitors, respectively as aforesaid, and this cause coming on now to be heard, upon the motion of the complainants in the original bill and supplemental bill, heretofore filed herein, to dismiss their said original bill and supplemental out of court, at the costs of complainants, and without prejudice to said complainants, and also without prejudice to the further maintenance by said Daniel Lawrence of his cross-bill of com-
535 plaint, filed in said cause; and the court now here, after hearing the argument of counsel upon said motion, and having carefully considered the premises, and being fully advised in the same, doth hereby order that said motion be, and the same is hereby, overruled and denied.

And afterwards, to wit, on the seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, the same being one of the days of the June term of the said superior court of Chicago, in said year, the following among other proceedings were had in said court in said cause, and entered of record in the words and figures following, to wit:

Decree.

LIBERTY BIGELOW, DAVID A. GAGE, & FRANKLIN Parmelee *vs.* DANIEL LAWRENCE.	Bill.
536 DANIEL LAWRENCE. *v.* LIBERTY BIGELOW, AND HARRIET A. BIGELOW, his wife; David A. Gage, and Eliza A. Gage, his wife; Walter S. Johnson, and Electa M. Johnson, his wife; and Franklin Parmelee, and Adaline, his wife, deceased during the pendency of this suit.	Cross-bill.
DAVID A. GAGE, LIBERTY BIGELOW, AND FRANKLIN Parmelee *vs.* DANIEL LAWRENCE.	Supplemental bill.

This cause coming on this day to be heard upon the pleadings and exhibits filed, and proofs taken in the several matters of the said original bill of the said complainants, Liberty Bigelow, David A. Gage, and Franklin Parmelee, against Daniel Lawrence, defendant, therein, and in the
537 matter of the said cross-bill of the said Daniel Lawrence against the said Liberty Bigelow, and Harriet A. Bigelow, his wife; David A. Gage, and Eliza A. Gage, his wife; Walter S. Johnson, his wife; and Franklin Parmelee, and Adaline Parmelee, his wife, (since deceased, and whose decease has been suggested of record,) defendants in said cross-bill, and in the matter of said supplemental bill of said Bigelow, Gage, and Parmelee, complainants, against said Lawrence, defendant:

And the defendants to said cross-bill of said Lawrence being duly before the court, and all having appeared and filed their answers to said Lawrence's said cross-bill, and C. Beckwith, esquire, and Sidney Smith, esquire, of counsel for the said complainants in said original bill, and for all of the defendants named in said Lawrence's said cross-bill, and Charles A. Gregory, esquire, of counsel for the said Daniel Lawrence, having been heard:

And this court being fully advised of all the premises, and it
538 appearing to the court that a certain decree herein was heretofore, to wit, on the 12th day of January, 1866, entered of record, wherein it was decreed as in said decree recited, which said decree is recorded in the records of the superior court of Chicago, Cook County, Illinois, in book 19, at page 28 to 35 inclusive, to which record reference is hereby made for more full particulars thereof; and that the said Franklin Parmelee, David A. Gage, and Walter S. Johnson perfected their appeal to the supreme court of Illinois from said decree of this court; and such proceedings in said cause were had in said superior court that afterwards a certain judgment and decision therein was rendered in said supreme court as of the April term thereof, A. D. 1867, upon a petition for rehearing in the third grand division at Ottawa, Illinois; and that thereby, to wit, by the judgment and decision of said supreme court, the said decree of this court, of the 12th day of January, 1866, herein,
539 was reversed for error therein, the error aforesaid consisting, as appears by the decision of said supreme court, in the rate and

amount of the interest awarded by said decree, and in the computation of the amount due to the said defendant Lawrence herein; and the said cause having been remanded to this court for a rehearing, and the said judgment and decision, and the mandate of the supreme court herein, having been certified to this court, and filed in this cause in this court on the day of November, A. D. 1867, and now, upon this rehearing of this cause, the pleadings and exhibits filed, and proofs taken, and all the matters in said cause being precisely the same as at the former hearing hereof, except as to the proceedings of said supreme court, as aforesaid, and no new or further evidence being introduced:

And it appearing satisfactory to the court, as aforesaid, and from the opinion and decision of the supreme court as aforesaid, that, on or about the 15th day of September, 1856, the said complainants and Wal-
540 ter S. Johnson borrowed of the said defendant Daniel Lawrence, and that said Lawrence then loaned to them, the sum of fifty thousand dollars; and that they, and each of them, then and there agreed to pay the same to him with interest thereon in certain installments, as alleged by said Daniel Lawrence in his cross-bill filed herein; and that the said complainants, at the time of the making of the said loan by their agreements, then made with said Lawrence in that behalf, charged the repayment of the said principal sum of money, together with the interest thereon at the rate of ten per centum per annum, upon the following-described parcels of land, situate in the city of Chicago, county of Cook, and State of Illinois, to wit: Lots numbers fifteen (15) and sixteen, (16,) in block number thirteen, (13,) in Fort Dearborn addition to Chicago; also the north eight (8) feet of lot number fourteen, (14,) in said block thirteen, (13;) and also all that part of lot number fourteen, (14,)
541 in block number thirteen, (13,) in Fort Dearborn addition to Chicago, commencing twenty (20) feet north of the southwest corner of said lot, running thence north on a line with State street twenty (20) feet, thence east one hundred and fifty (150) feet, thence south twenty (20) feet, thence west one hundred and fifty (150) feet, to the place of beginning; and that the said complainants, and the said Johnson, and their said wives (except the wife of said Bigelow) then and there conveyed the said lands to the said defendant Lawrence, as security for the repayment to him of the said sum of fifty thousand dollars, together with the interest thereon at the rate of ten per centum per annum, as aforesaid:

And it further appearing to the court, as aforesaid, that at the time of the making of said loan, and of their agreement in that behalf to repay the same, and at the time of charging the repayment of the same with interest, as aforesaid, upon the said parcels of land, that the
542 said complainants executed and delivered to the said defendant their certain obligation to pay to the said defendant as interest on the said loan [loan] two (2) per centum per annum in addition to the said ten per centum, but that the said last-mentioned two (2) per cent. was not, nor was the payment thereof, directly or indirectly, by the agreement or understanding of the said parties or otherwise, charged upon the said parcels of land, or upon any part thereof so conveyed to said Lawrence as security as aforesaid:

And it further appearing to the court, as aforesaid, that from and after the time the said loan was so made as aforesaid, and up to the first day of April, 1861, that they, the said complainants, paid to the said Lawrence as and for interest on the said loan the sum of twenty-seven thousand dollars ($27,000) in nine semi-annual instalments of three thousand dollars each, said payments being made at the end of every six months,

the first payment being made April 1st, 1857, and the last pay-
543 ment being made on or about the first day of April, 1861, and that the interest on said loan was, by the said agreement of the said parties, to commence on the first day of October, 1856:

And it further satisfactorily appearing to the court, as aforesaid, that on the said 1st day of April, 1861, after allowing credit to the said complainants for all interest at ten per centum per annum, as paid up to and including that date, and after allowing a credit upon the principal for all the excess of interest above ten per cent. per annum, so paid as aforesaid, such credit upon the principal being allowed at the respective times of each of said semi-annual payments, there remained due from the said complainants to the said defendant, as a part of the principal, the sum of forty-four thousand four hundred and eighty-six dollars and sixty-eight cents:

And it further satisfactorily appearing to the court, as aforesaid, that from thence until the 12th day of August, A. D. 1864, the said complainants and the said Johnson did not, nor did either of them,
544 pay to the said defendant any sum or sums of money, either on account of the interest or principal of said loan, and that on the said 12th day of August, A. D. 1864, there remained and was due to the said defendant forty-four thousand four hundred and eighty-six dollars and sixty-eight cents, together with interest thereon at the rate of ten (10) per cent. per annum from the said first day of April, A. D. 1861, the total of the rates of interest received between the parties appearing to be usurious, and contrary to law; and that the excess of the interest so received above ten per cent. per annum is forfeited under the law for usury; and at that time, to wit, August 12th, 1864, the said remainder of principal, with interest thereon from the time last aforesaid at the rate of ten per cent. per annum, amounted to the sum of fifty-nine thousand four hundred and fifty-one dollars and forty-six cents; and that on the said 12th of August, 1864, the said Liberty Bigelow, one of the said complainants, on account of the said sum of money so then re-
545 maining due and unpaid, did then and there pay to the said Lawrence the sum of twenty-two thousand five hundred and fifty-seven dollars, ($22,527 00,) upon an agreement then and there made by and between the said Bigelow and the said Lawrence, of the force and effect that the said Lawrence should not further charge the said Bigelow, nor his property or estate, nor his interest in the said parcels of land, for, or on account of, the residue of the said moneys so on that day due to the said Lawrence, as aforesaid, but that he, the said Lawrence, should make the same out of the said Parmelee, Gage, and Johnson, and out of their interest in said premises, and that in the event of a sale of said property mentioned in said articles of agreement, under any order of this court herein, the interest of said Bigelow therein is to be protected, according to said settlement so made with said Bigelow as last aforesaid:

And it further satisfactorily appearing to the court that after the deduction of the said payment of $22,527 from the said sum of
546 money so due on the said 12th day of August, 1864, that there was still due to the said defendant, and then and there remaining charged on the interest of the said Gage and Parmelee in the said land (said Johnson having parted with his interest therein, as next hereinafter stated) the sum of thirty-six thousand eight hundred and ninety-four dollars and forty-six cents; and that prior to the said 12th day of August, A. D. 1864, the said Bigelow, Gage, and Parmelee had acquired all of the interest or right of the said Johnson in and to the said parcels of land, subject to an agreement to save him harmless, &c.:

And it further appearing satisfactorily to the court, as aforesaid, that no part of the said sum of money still remaining due to the said Lawrence on the 12th day of August, A. D. 1864, after deducting the moneys on that day paid by the said Bigelow, as aforesaid, hath since been paid, but that the same, together with interest at the rate of ten (10) per

per anuum from the time last aforesaid, still remains due and
547 unpaid to the said Lawrence; and that the payment thereof, together with interest thereon at the rate of ten per cent. per annum, is still a charge upon the said Gage and Parmelee's interest in the said parcels of land, said Johnson having parted with his interest therein, as aforesaid; and that there is now due and owing and unpaid, to the said defendant Lawrence, on account thereof, the full sum of fifty-one thousand and eighty-eight dollars and fifty-seven cents; and that said defendant Lawrence still holds the interest of them, the said Gage and Parmelee, in the said parcels of land, as security by way of mortgage for the payment of the said sum of money so remaining due to him as last aforesaid, together with such interest as may accrue thereon at the rate of six per cent. per annum from and after the entry of this decree, until the same is paid; and that the said Lawrence is entitled to make said sum of money and interest out of the said

mortgage security so remaining to him as aforesaid; and, if any
548 residue there be still due to him after the said security is exhausted and appropriated, as hereinafter ordered, that he is entitled to make the same out of the said Gage, Parmelee, and Johnson, and out of their property and estate:

And it further appearing satisfactorily to the court, as aforesaid, that the said complainants, and the said Johnson, in addition to the said principal sum of money and interest, likewise at that time charged upon the said parcels of land such reasonable premiums for insurance of the tenements thereon as the said Lawrence should thereafter pay, and also agreed in said articles of agreement to keep said premises well and sufficiently insured during said time—that is, the time of said loan, for the use and benefit of said Lawrence:

And it appearing to the court here, from the admission of the said complainants and said Johnson in that behalf, that the said Lawrence, on the 1st day of December, A. D. 1863, paid for such insurance premiums the sum of one hundred and fifty-two dollars; that the
549 payment thereof was reasonable and just; and the same, with interest at the rate of six (6) per cent. per annum, then and from thence became a charge on said premises:

And it further appearing satisfactorily to the court, from the evidence and admissions made by the parties in that behalf herein, that the said Bigelow, Gage, and Parmelee have agreed to hold the said Johnson harmless from the payment of whatever may be due to the said Lawrence in the premises:

And it further appearing to the court, as aforesaid, that the said complainants have failed to maintain and prove the material allegations of their said original bill of complaint exhibited herein; and also that they have failed to show to the court that they are entitled to the special relief prayed for in their said supplemental bill of complaint exhibited herein:

And it further appearing satisfactorily to the court, from the evidence and proofs herein, that the said defendant Daniel Lawrence has
550 maintained and proved the material allegations in his said cross-bill of complainant contained, and hath maintained the issues therein on his part, and that there is now due to the said defendant on

account of the said insurance premiums, paid by him as aforesaid, and the interest thereon, the sum of one hundred and ninety-three dollars and forty-two cents, in addition to the amount due as aforesaid on the said loan, making in all now due and owing to the said defendant, for the payment whereof the said complainants and said Johnson conveyed as a mortgage security to said defendant the parcels of land as aforesaid and their rights under the lease mentioned in the pleadings and given in evidence, the sum of fifty-one thousand two hundred and eighty-one dollars and ninety-nine cents:

Now, therefore, the premises considered, it is thereupon hereby ordered, adjudged, and decreed by the court that the decree of this court heretofore rendered herein, to wit, on the 12th day of January,
551 A. D. 1866, be, and the same is hereby, reversed, annulled, and declared void forever therein, and that the injunction heretofore granted in this cause is hereby dissolved.

And it is hereby further ordered, adjudged, and decreed that there is now due to the said defendant from the said Parmelee, Gage, and Johnson the said sum of fifty-one thousand two hundred and eighty-one dollars and ninety-nine cents, which hath accrued and as yet remains unpaid, as aforesaid; and that the said sum of money last aforesaid, by reason of the premises, still remains, and is now, a lien and charge upon the interest of the said Gage and Parmelee in the said parcels of land and in the lease aforesaid, and that the said defendant still holds their said interest in the said premises, and the said lease, by way of mortgage, as security for the payment of the said last-mentioned sum of money, and such interest as may accrue thereon, and not otherwise.

552 And the court doth hereby further order, adjudge, and decree that the said David A. Gage and the said Franklin Parmelee, parcel of the said complainants in the said original bill named, pay, or cause to be paid, to the said David Lawrence, or to his solicitor, the sum of fifty-one thousand two hundred and eighty-one dollars and ninety-nine cents, together with such interest as may accrue thereon, at the rate of six (6) per cent. per annum from the date of the entry of this decree, to wit, from the 17th day of June, A. D. 1868, within ten days from said date; and that, upon such payment being made as aforesaid, the said Lawrence do release and quitclaim the interest acquired of the said complainants and Johnson, and held by him in and to the said parcels of land, with covenants against his own acts touching the premises, to the said Liberty Bigelow, Franklin Parmelee, and David A. Gage, the said complainants, to hold to them according to their respective rights therein, and as the assignees of the said Johnson's interest in the
553 said lands; and that in case the said Gage and Parmelee shall fail and make default in paying the said sum of fifty-one thousand two hundred and eighty-one dollars and ninety-nine cents, and interest thereon at the rate last aforesaid, within the time hereinbefore limited and directed, that then the interest of the said Gage and Parmelee in the said parcels of land and in the lease aforesaid, or so much thereof as may be necessary to pay the said debt, interest, and costs, be sold by Ira Scott, one of the masters of this court, who is hereby appointed a special commissioner for that purpose, to the highest and best bidder therefor, for cash, at the north door of the court-house in the city of Chicago, Cook County, Illinois, but subject, nevertheless, to redemption within the time limited by law; and that any of the parties to this cause be at liberty to bid at such sale; and that before such sale shall be made the said Ira Scott shall publish a notice thereof in the Chicago Eve-
554 ning Journal, a newspaper printed and published in the said city of Chicago, for twenty (20) days, giving notice of the time and

place thereof; and that the said Ira Scott, as such commissioner, shall make out and deliver to the purchaser or purchasers, or to his or their legal representatives, a certificate of said sale in due form of the interest of the said Gage and Parmelee in the said premises; and in case the same shall not be redeemed according to law within fifteen months after such sale, then that said Scott, as such commissioner, made or deeds in due form of law to the person or persons entitled thereto on account of such sale, according to the practice of this court.

And it is hereby further ordered, adjudged, and decreed that the expences, costs, and charges of the said sale shall be first paid out of the proceeds of the said sale, and that the said master, out of the said proceeds, retain his fees, disbursements, and commissions on the said
555 sale, and pay to the said Lawrence, or to his solicitor, out of the said proceeds, his costs to be taxed in this cause, and also the amount so adjudged to be due to the said Lawrence as aforesaid, together with six (6) per cent. interest thereon from the date of this decree, to wit, from the said 17th day of June, A. D. 1868, or so much thereof as the proceeds of said sale will pay, after deducting the said costs and expenses; and that the said master take receipt for the said amounts so to be paid, as the same are paid by him, and that he bring the same, together with his accounts and vouchers, and any surplus money, if any, into court, for its further order touching the same, and make report to the court of his doings in the premises.

And it is hereby further ordered, adjuged, and decreed that the said Gage, and Parmelee, and all persons holding by, through, from, or under them, or either of them, shall be forever barred and foreclosed of and from all equity of redemption, and claim of, in, and to their said interest in said premises, and said lease upon such deed of conveyance
556 thereof, being made as aforesaid, in case the said premises shall not be redeemed as aforesaid, and said purchasers or purchaser shall thereupon be entitled to possession of the premises so sold, and the said Gage and Parmelee, and all persons claiming under them, shall thereupon surrender possession of said premises to said purchaser or purchars to them, or any or either of them.

And it is hereby further ordered, adjudged, and decreed that if the money arising from the said sale shall be insufficient to pay the amount so found due to the said defendant as aforesaid, after the said proceeds of sale shall be applied as aforesaid, that then, and in that case, the said Lawrence shall have execution against the goods and chattels, lands and tenements, of the said David A. Gage, Franklin Parmelee, and Walter S. Johnson for such balance still remaining due on account of the said debt and interest.

And it is hereby further ordered, adjudged, and decreed that
557 the said defendant Lawrence, on being paid the said sum of money and interest hereinbefore adjudged to him, do also surrender up to them, the said complainants, to be cancelled, the said agreement for the payment of the said additional two (2) per cent. interest, the same being hereby declared void and of no effect for the cause of usury, as aforesaid, the said Lawrence being, by this decree as aforesaid, required to forfeit all the excess above ten per cent. [per cent.] per annum reserved by the parties aforesaid in and by any and every of their agreements in respect of said loan of money, as aforesaid, and to this and the extra two per cent. per annum of interest, which was paid at the times of the semi-annual payments made as recited above, has been applied as a credit upon the principal sum as of the times of the making of such payments; and the said bond for the extra two (2) per cent. notes is hereby declared void.

And the court doth hereby further order, adjudge, & decree that the said indenture or conveyance, dated the 15th day of September, 1856, made by the said Liberty Bigelow, David A. Gage, Eliza M. Gage,
558 Walter S. Johnson, Electa M. Johnson, Franklin Parmelee, and Adaline Parmelee, as parties of the first part, to the said Daniel Lawrence, as party of the second part, conveying to him the said premises, and recorded in the recorder's office of Cook County aforesaid, in book of deeds number one hundred and twenty-three, (123,) at page one hundred and twenty-eight, (128,) and the said contract of even date therewith between said Lawrence and the said Bigelow, Gage, Parmelee, and Johnson, were, at the time of their execution, and still are, a mortgage and evidence of indebtedness to said Lawrence to secure a loan of money, then and there made by him to said Bigelow, Gage, Parmelee, and Johnson; and that the said sum of money hereinbefore decreed to be a charge on said premises, and to be paid to said Lawrence, is the residue remaining unpaid of said loan and interest, and certain insurance moneys by said indenture and contract charged upon said premises, and in and by the said contract (so called) agreed by
559 said Bigelow, Gage, Parmelee, and Johnson to be paid to said Lawrence.

And it is hereby decreed that said Bigelow is forever released and discharged from any and all further payment or obligation to said Lawrence upon or on account of anything in said articles of agreement contained, and the said Lawrence shall thereupon convey and release said premises by deed, with covenants against his own acts only touching said premises, unto said Gage, Parmelee, and Bigelow, and from thenceforth the said Daniel Lawrence shall remain discharged from all liability on account of any and all matters and things in the said contract (of even date with the said indenture, dated the 15th day of September, 1856) contained, and the said agreement shall thereupon be delivered up to him to be cancelled.

And this court doth hereby reserve the consideration of all further and other matters herein until the report of the said master shall be made to the court from time to time, for its further order or orders
560 necessary to carry into effect and perfect this decree; and any of the parties are at liberty to apply to the court as there shall be occasion, &c.

And the complainants David A. Gage and Franklin Parmelee having entered their exceptions herein, pray an appeal to the supreme court of this State from the decree of this court; which is allowed them, on filing their appeal bond herein in the penalty of sixty-five thousand dollars, with security to be approved by one of the judges of this court, and to be filed within fifteen days from this date.

Know all men by these presents that we, Franklin Parmelee, David A. Gage, George W. Gage, and Hiram Wheeler, of the city of Chicago, County of Cook, and State of Illinois, are held and firmly bound unto Daniel Lawrence, of Medford, in the State of Massachusetts, in the penal sum of sixty-five thousand dollars, lawful money; for the payment of which, well and truly to be made, we bind ourselves, our heirs,
561 executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this day of July, A. D. 1868.

The condition of this obligation is such, that whereas, on the 4th day of August, A. D. 1863, the said Franklin Parmelee, David A. Gage, and

Liberty Bigelow filed their certain bill of complaint in the superior court of Chicago, on the chancery side thereof, against the said Daniel Lawrence:

And whereas the said Daniel Lawrence afterwards, and on the 6th day of October, A. D. 1863, filed his certain cross-bill of complaint in said cause against the said Parmelee, Gage, Bigelow, and Walter S. Johnson and others:

And whereas afterwards, and on the 24th day of September, A. D. 1864, the said Bigelow, Gage, and Parmelee filed their supplemental bill of complaint in said cause:

And whereas such proceedings were had in said cause that afterwards, and on the 17th day of June, A. D. 1868, a decree was ren-
562 dered and entered therein, in and by said court, whereby, amongst other things, it was ordered, adjudged, and decreed that there was due and owing to said Lawrence the sum of fifty-one thousand two hundred and eighty-one dollars and ninety-nine cents, ($51,281 99,) which was a lien and charge on all the interest of said Franklin Parmelee and David A. Gage in or to the lands and premises in said decree mentioned and described; and that said sum should be on interest at the rate of six per cent. per annum from the said 17th day of June A. D. 1868, until paid; and that the said Gage and Parmelee should pay said sum to the said Daniel Lawrence, or to his solicitor, within ten days from the said 17th day of June 1868; and in case the said Gage and Parmelee should make default in the payment of said sum or interest, then that their interest in said lands and tenements, or so much thereof as should be necessary, should be sold by Ira Scott, esq., one of the masters of said court; that if the moneys arising out of such sale should be insufficient to pay the amount so found
563 due as aforesaid, with interest, after such proceeds shall have been applied, then the said Daniel Lawrence to have execution against the goods, chattels, lands, and tenements of said Gage, Parmelee, and Johnson for such balance still remaining due on account of said debt, as by the said decree, reference being thereunto had, will more fully and at large appear; from which decree the said Franklin Parmelee and David A. Gage have taken an appeal to the supreme court of the State of Illinois:

Now, therefore, if the said Franklin Parmelee & David A. Gage shall duly and diligently prosecute their said appeal, and shall pay to the said Daniel Lawrence any balance of the monies aforesaid which may be still remaining unpaid after the sale of the said lands and tenements and application of the proceeds of said sale, according to the provisions and terms of said decree, and all costs, interest, and damages, in case the said decree shall be affirmed in and by the said supreme court,
564 then this obligation to be void; otherwise to remain in full force, effect, and virtue.

FRANKLIN PARMELEE, [SEAL.]
By SIDNEY SMITH, *Att'y in Fact.*
DAVID A. GAGE. [SEAL.]
GEO. W. GAGE. [SEAL.]
HIRAM WHEELER. [SEAL.]

Approved:

J. A. JAMESON,
Judge Supr. C't of Chicago.

JULY 3, 1868.

STATE OF ILLINOIS, *Cook County, ss:*

I, Augustus Jacobson, clerk of the superior court of Chicago within and for the county and State aforesaid, do hereby certify the above and foregoing to be a full, true, and complete transcript of all the papers and pleadings on file in my office, and of all orders and decrees entered of record in said court, called for in the præcipe for transcript of record filed herein, together with the appeal bond, in a certain cause lately pending in said court, on the chancery side thereof, wherein Liberty Bigelow et al. were complainants and Daniel Lawrence defendant.

565 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, this 31st day of August, A. D. 1868.

[SEAL.] AUGUSTUS JACOBSON,
Clk Sup. Ct.

[5-ct. rev. stamp, cancelled.]

Written upon and attached to the above record is the following assignment of and joinder in errors; which are in words & figures, to wit:

566 Supreme court of Illinois, third grand division, September term, A. D. 1868.

FRANKLIN PARMELEE & DAVID A. GAGE, appellants, *vs.* DANIEL LAWRENCE, APPELLEE. } Assignment of errors.

And now come the said Franklin Parmelee & David A. Gage, appellants, by C. Beckwith & Sidney Smith, their attorneys, & say that in the record & proceedings aforesaid, & in the giving and rendering of the decree aforesaid, there is manifest error in this, viz:

1st. The court below erred in overruling the motion to dismiss the original and supplemental bills without prejudice, &c.

2nd. The circuit below erred in rendering a decree in favor of the appellee, Daniel Lawrence, but should have rendered a decree dismissing his cross-bill.

567 3rd. The court below erred in finding so large a sum due and unpaid upon the mortgage, and in rendering a decree for so large a sum.

4th. The court below erred in its finding decree upon the issue of usury, and in allowing to said Lawrence any interest, and especially in allowing to said Lawrence so high a rate of interest, or any rate above six per cent. simple interest.

5th. The court below erred in not allowing and applying as payment on the principal all usurious interest paid.

6th. The court below erred in applying to the case the provisions of the act of the general assembly of the State of Illinois concerning suits upon usurious contracts, approved February 28th, A. D. 1867, and in rendering a decree based upon the provisions of said act, because its provisions are inapplicable to the suit, and because said act is a

568 violation of the constitution of the State of Illinois, and also a violation of the Constitution for the United States of America, and is, therefore, void.

7th. Said decree is contrary to law and equity.

And said appellants pray that, for the errors aforesaid, said decree may be reversed, &c.

C. BECKWITH &
SIDNEY SMITH,
Attorneys for said Appellants.

And the said appellee, Daniel Lawrence, comes into court here and says that there is no error in the record and proceedings aforesaid, and prays that the said decree and judgment be affirmed in all things, with costs, &c.

By his attorney,

C. A. GREGORY.

569 Upon the back of which record, with the assignment of & joinder in errors attached as aforesaid, appears the following endorsement and filing:

220. Parmelee et al. versus Lawrence. Record.
Filed Sept. 9th, 1868.

W. M. TAYLOR, *Clk.*

570 And afterwards, to wit, on the twenty-third day of September, A. D. 1868, the same being one of the days of the September term of said supreme court, this cause coming on to be heard on the errors assigned & joinder therein, come the parties hereto, by their respective attorneys—Corydon, Beckwith, and Sidney Smith, esqrs., for appellants; and C. A. Gregory, esq., for appellee—and submit this cause upon briefs and arguments, to be filed on the fifteenth day of October next.

571 And afterwards, to wit, on the twenty-seventh day of April, in the year A. D. 1869, an opinion of the said supreme court of Illinois was filed in the office of the clerk thereof, affirming the decree of the superior court of Chicago; whereupon an order was entered of record in said clerk's office; which said order of affirmance is in the words & figures following, to wit:

At a supreme court begun & held at Ottawa on Tuesday, the eighth day of September, in the year of our Lord one thousand eight hundred & sixty-eight, within and for the third grand division of the State of Illinois:

Present, the Honorable Sidney Breese, chief justice.
" " " Charles B. Lawrence, associate justice.
" " " Pinkney H. Walker, associate justice.

Vacation after September term, A. D. 1868, April 27th, A. D. 1869.

572 FRANKLIN PARMELEE, DAVID A. GAGE, and Walter S. Johnson
vs.
DANIEL LAWRENCE.
} No. 220.—Appeal from superior court of Chicago.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters & things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erronious, vicious, or defective, and that that record is no error:

Therefore, it is considered by the court that the decree aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters & things therein assigned for error. And it is further considered by the court that the said appellee recover of and
573 from the said appellants his costs by him in this behalf expended; and that he have execution therefor.

And afterwards, to wit, on the seventh day of May, A. D. 1869, there was filed in the office of the clerk of the said supreme court of the State of Illinois a bond; which is in words and figures following:

Know all men by these presents that we, Franklin Parmelee, David A. Gage, are held and firmly bound unto Daniel Lawrence in the full and just sum of seventy thousand dollars, ($70,000 00,) to be paid to the said Daniel Lawrence, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, by these presents, sealed with our seals, and dated this sixth day of May, A. D. 1869.

Whereas lately, to wit, on the 27th day of April, A. D. 1869, in
574 a suit depending in the supreme court of the State of Illinois between the said F. Parmelee & D. A. Gage and one Daniel Lawrence, judgment was rendered against the said Parmelee & D. A. Gage, and in favor of the said Lawrence; & the said Franklin Parmelee and David A. Gage having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the decision and judgment in the aforesaid suit, and a citation to the said Daniel Lawrence, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Franklin Parmelee and David A. Gage shall prosecute to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force & virtue.

FRANKLIN PARMELEE. [SEAL.]
DAVID A. GAGE. [SEAL.]
HIRAM WHEELER. [SEAL.]
GEO. W. GAGE. [SEAL.]

Sealed & delivered in presence of—

Upon the back of which bond is the following endorsement & filing:
Filed May 7th, 1869.

W. M. TAYLOR, *Cl'k.*

In the margin of said bond is written:
Approved:

THO'S DRUMMOND,
Judge of the Circuit Court of the U. S., Nor. Dist. Ill's.

575 And on the same day, to wit, the said seventh day of May, A. D. 1869, there was filed & left in the clerk's office of this court, for the said Daniel Lawrence, a copy of the writ of error issued herein, and addressed to him; which said copy was and is in the words and figures of the original writ of error issued herein, and which is appended to this record.

576 And afterwards, to wit, on the twenty-ninth day of October, A. D. 1869, there was filed in the office of the clerk of the supreme court of the State of Illinois aforesaid a citation, with an acknowledgement of service thereon; which citation, with the acknowledgement of service, is in words & figures following:

THE UNITED STATES OF AMERICA:

To Daniel Lawrence, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Mon-

day of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois for the third grand division, wherein Franklin Parmelee and David A. Gage are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why
577 speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sidney Breese, chief justice of the supreme court of the State of Illinois, this seventh day of May, A. D. 1869.

SIDNEY BREESE,
Chief Justice of the Supreme Court of the State of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois:

I hereby admit due service of the foregoing citation, for and on behalf of the said Daniel Lawrence, this 29th day of October, A. D. 1869, and of a copy thereof, and hereby accept service of the same.

GEORGE PAYSON,
Solicitor for Daniel Lawrence, and of Counsel.

578 And afterwards, to wit, on the 23d day of November, A. D. 1869, there was filed in the office of the said clerk of the supreme court of the State of Illinois a certificate of the Honorable Sidney Breese, chief justice of said court; which certificate is in words & figures, following:

In the supreme court of the State of Illinois.

FRANKLIN PARMELEE AND DAVID A. GAGE, appellants,
vs.
DANIEL LAWRENCE, APPELLEE.

Be it known that, in the final judgment and decree of our said supreme court in the above cause, there was drawn in question the validity of so much of a statute of the State of Illinois, entitled "An act concerning the remedy upon the class of contracts therein referred to," approved February 28th, 1867, as enacts that, in all suits upon written contracts made while the act entitled "An act to amend the interest laws of this State," approved January 30th, 1849, was in force, and prior to the passage of the interest law, approved January 31st, 1857, abolishing all laws providing for penalties for taking or contracting for
579 more than the legal rate of interest, wherein in (any such contract) a higher rate of interest than ten per cent. per annum was reserved, and when the fact of usury is insisted upon in the pleadings in the suit and proven, the creditor shall forfeit all excess of the interest over the rate it was competent for the parties at the time of contracting to reserve in writing, and shall forfeit no more, and that said "act shall take effect from the time of its passage;" and that the same was so drawn in question therein, on the ground that the said provisions of the statute aforesaid were repugnant to the Constitution of the United States, and especially to so much of the tenth (10th section of article one thereof as provides that no State shall pass any law impairing the obligation of contracts; that the said Franklin Parmelee & David A. Gage then and there claimed that the said provisions of said above-described statutes were void for the repugnancy aforesaid;

and thereupon the decision of our said supreme court was in favor of the validity of said provisions of said statute, and that the same were not repugnant to the Constitution of the United States in the
580 particular aforesaid; and such was and is the force and effect of the said final judgment and decree of our said supreme court in the premises, so far as the question of interest is involved. To all which the chief justice, for himself and the associate justices of the said supreme court, hereunto certifies, and makes this a part of the record in said cause.

SIDNEY BREESE, *Ch. J.*

581 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said the supreme court of the State of Illinois before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Franklin Parmelee and David A. Gage and one Daniel Lawrence, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of
582 the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Franklin Parmelee and David A. Gage, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distintly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

583 Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, the seventh day of May, A. D. 1869, and William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois.

[SEAL.] W'M H. BRADLEY, *Clerk.*

Allowed by—

HON. THOMAS DRUMMOND,
U. States Judge, Northern Dist. of Ill's.

Allowed by—

SIDNEY BREESE,
Ch. Justice Sup. Court State of Illinois.

584 (Indorsed:) Writ of error. Franklin Parmelee et al. vs. Daniel Lawrence. U. S. Sup'me C't, Dec. term, 1869.
Filed May 7, 1869.

W. M. TAYLOR, *Clk.*

585 THE UNITED STATES OF AMERICA:

To Daniel Lawrence, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, (for the third grand division,) wherein Franklin Parmelee and David A. Gage are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sidney Breese, chief justice of the supreme court of the State of Illinois, this seventh day of May, A. D. 1869.

SIDNEY BREESE,
Chief Justice of the Supreme Court of the State of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois:

586 I hereby admit due service of the foregoing citation for and on behalf of the said Daniel Lawrence, this 29th day of October, A. D. 1869, and of a copy thereof, and hereby accept service of the same.

GEORGE PAYSON,
Solicitor for Daniel Lawrence, and of Counsel.

587 (Indorsed:) 220. Citation. Franklin Parmelee et al. vs. Daniel Lawrence. Supreme Court of the United States.

Filed Oct. 29, '69.

W. M. TAYLOR, *Clk.*

588 STATE OF ILLINOIS, *ss:*

I, Woodbury M. Taylor, clerk of the supreme court for the third grand division of the State of Illinois, do hereby certify that the above and foregoing is a true & complete copy of all the papers on file in my office in a certain cause appealed from the superior court of Chicago, and entitled "Franklin Parmelee and David A. Gage vs. Daniel Lawrence," except the briefs & arguments of counsel, abstract of record, and the opinion of said supreme court.

I further certify that this record contains a full and complete copy of all the proceedings in said cause which appears of record in my office, except as aforesaid; and that appended thereto is the original writ of error and original citation, with the admission of service endorsed thereon.

In witness whereof I have hereunto placed my hand and the seal of said supreme court, at Ottawa, this 22d day of November, A. D. 1869.

[SEAL.] W. M. TAYLOR, *Clk.*

(Indorsement on cover:) No. 377. Franklin Parmelee and David A. Gage, plaintffs in error, vs. Daniel Lawrence. Illinois sup. c't.
Filed 12th December, 1869.

Supreme Court of the United States.

FRANKLIN PARMELEE AND DAVID A. GAGE,
v.
DANIEL LAWRENCE.

October Term, 1870.

ARGUMENT FOR PLAINTIFFS IN ERROR.

The cause comes to this court by a writ of error to the Supreme Court of Illinois (Rec. p. 1). From the record, it appears that on the 4th day of August, 1863 (Rec. p. 1), Liberty Bigelow, David A. Gage and Franklin Parmelee, filed their bill in chancery against Daniel Lawrence, in the Superior Court of Chicago, setting forth a written agreement, dated September 15, 1856, between said Daniel Lawrence, of the one part, and said Liberty Bigelow, David A. Gage, Franklin Parmelee, and one Walter S. Johnson, of the other part, by which the said Lawrence agreed to convey to said Bigelow, Gage, Parmelee and Johnson, certain premises in the city of Chicago, upon the payment of the sum of $50,000, with interest at the rate of ten per cent. per annum, at the times and in the manner in said agreement provided. The agreement mentioned, contained a covenant on the part of Bigelow, Gage, Parmelee and Johnson, to pay for the premises therein described, the sum of $50,000, at the office of F. Parmelee & Co., in the city of Chicago, in five equal annual installments, from the first day of October, 1856, to wit: $10,000 on the first day of October, 1857, and the like amount on the same day in each year thereafter, until the whole sum of $50,000 should be paid, with a proviso that said Bigelow, Gage, Parmelee and Johnson might pay the same in larger installments at the times specified, or sooner if they desired so to do. The agreement further provided, that the interest on the sum of $50,000, at the rate of ten per cent., should commence October 1st, 1856, and should be paid semi-annually thereafter,

at the Tremont Bank, in the city of Boston. By the agreement, Bigelow, Gage, Parmelee and Johnson, were to have immediate possession of the premises, and to retain possession of the same, receiving the rents and profits to their own use, during the time designated, for the payment of the $50,000, and were to complete the erection of the buildings then being erected on the premises, and pay all taxes thereon. A copy of the agreement was attached to the bill as an exhibit (Rec. pp. 8, 9). The bill further set forth that Bigelow, Gage, Parmelee and Johnson, had, relying upon said agreement, completed and finished the buildings therein mentioned, and had expended, in so doing, the sum of $100,000; that Johnson, on the sixth day of November, 1858, conveyed his interest in the premises to Bigelow, Gage and Parmelee; that Lawrence had been paid $27,000 on account of the moneys to be paid by the agreement, and that he was then unable to make a title to the premises to Bigelow, Gage and Parmelee. The bill offered to pay the residue of the moneys due upon the agreement, and prayed that Lawrence might be restrained from insisting on any forfeiture by reason of their non-payment, and from making any conveyance of the premises; for an equitable adjustment of the rights of the parties, and for an injunction in the meantime. Summons issued and was served (Rec. p. 10), and an injunction was granted (Rec. p. 11). On the sixth day of October, 1863, Lawrence filed his answer (Rec. pp. 12, 13), admitting the making of the written agreement, set forth in the bill, and the expenditure of a large sum of money in the completion of the buildings therein mentioned, but the amount expended was not admitted. The answer admitted that payments had been made to Lawrence on account of the interest on the $50,000, but the amount of the payments was not admitted, and the answer denied that the sum of $27,000 had been paid, as alleged in the bill. The answer set forth that Bigelow, Gage, Parmelee and Johnson, by their deed dated September 15th, 1856, conveyed the premises to Lawrence, as security for a loan of money, and that he, Lawrence, was ready and willing to reconvey to Bigelow, Gage and Parmelee, whatever title he acquired by said deed, upon payment of the money loaned and the interest due thereon. The deed was

made an exhibit to the answer (Rec. pp. 20, 21). On November 30th, 1863, a replication was filed to the answer of Lawrence (Rec. p. 33). On the twenty-fourth day of September, 1864, a supplemental bill was filed by Bigelow, Gage and Parmelee (Rec. pp. 99, 104), setting forth a release by Lawrence, of the matters in controversy, to which an answer was filed December 3d, 1864, denying the execution of the alleged release (Rec. p. 108). A replication to this answer was filed December 5th, 1864 (Rec. p. 115) As no relief was granted upon the original or supplemental bill, and as they were practically dismissed by the Superior Court of Chicago, to which no objection was made in the Supreme Court of the State, further particulars of this part of the record are unnecessary. Mention is made of these proceedings, in explanation of the record, but neither the original nor supplemental bill, nor the answers thereto are properly before this court.

On the sixth day of October, 1863, Lawrence filed his cross-bill against Bigelow, Gage, Parmelee and Johnson, and their wives (Rec. pp. 12, 21), setting forth that Lawrence, on or about the fifteenth day of September, 1856, loaned to Bigelow, Gage, Parmelee and Johnson, the sum of $50,000, to be repaid with interest at the rate of ten per cent. per annum, at the times and in the manner mentioned in an agreement attached to the cross-bill as exhibit "E" (Rec. pp. 22, 29, 30, 31); that, as security for the repayment of said sum of money, at the times and in the manner mentioned in said agreement, Bigelow, Gage, Parmelee and Johnson, by their deed, dated September 15th, 1856, executed, conjointly with their wives, conveyed the premises in controversy to Lawrence. The deed was made an exhibit of the bill (Rec. pp. 28, 29). The agreement mentioned contains a covenant on the part of Lawrence to convey the premises to Bigelow, Gage, Parmelee and Johnson, upon payment of the sum of $50,000, at the office of T. Parmelee and Company, in the city of Chicago, in five equal annual installments, from the first day of October, 1856, to-wit: $10,000 on the first day of October, 1857, and the like amount on the same day in each year thereafter, until the whole sum of $50,000 should be paid, with a proviso, that said Bigelow, Gage, Parmelee and Johnson

might pay the same in larger installments, at the times specified, or sooner, if they desired so to do. The agreement also provided, as a condition precedent to the conveyance, that Bigelow, Gage, Parmelee and Johnson should pay Lawrence interest on the said sum of $50,000, or on so much thereof as should, from time to time, remain unpaid, at the rate of ten per cent. per annum, to commence October 1st, 1856, and to be paid semi-annually thereafter, at the Tremont Bank, in the city of Boston. The cross-bill prayed that the deed and agreement might be declared a mortgage, and that an account might be taken of the sum due Lawrence thereon, and for a decree directing the payment of the same, and that in default thereof that the defendants might be foreclosed of their equity of redemption, and the premises sold. On the twenty-second day of January, 1864, Bigelow, Gage, Parmelee and Johnson, filed their answer to the cross-bill of Lawrence (Rec. p. 59). The answer admitted the execution of the deed and agreement mentioned in the bill, and set forth that Bigelow, Gage, Parmelee and Johnson, on the fifteenth day of September, 1856, executed to Lawrence, as a part of the same transaction, a bond in the penal sum of $3,000, conditioned for the payment of two per cent. per annum on said sum of $50,000, or on so much thereof as should, from time to time, remain unpaid, as interest, in addition to the interest mentioned in the agreement set forth in the complainant's bill. The answer substantially admitted that the transaction between the parties, was a loan of money and security, taken for its repayment, with interest at the rate of twelve per cent. per annum, and insisted that the transaction was in violation of the usury laws of the State of Massachusetts, and of the State of Illinois, and that by reason thereof the complainant was not entitled to the relief sought. Exceptions were taken to the answer (Rec. p. 76), and overruled (Rec. p. 81), and afterwards, on the twenty-sixth day of March, 1864, a replication was filed (Rec. p. 81). On the same twenty-second day of January, 1864, Johnson filed his answer to the cross-bill of Lawrence, in substance the same as the answer of Bigelow, Gage and Parmelee (Rec. p. 34), to which exceptions were taken (Rec. p. 77), and overruled (Rec. p. 81), and afterwards, on the 26th day of March, 1864, a replica-

tion to Johnson's answer was filed (Rec. p. 82). On the 22d day of January, 1864, Johnson filed his cross-bill against Lawrence, Bigelow, Gage and Parmelee (Rec. p. 44.) A demurrer thereto was filed by Lawrence (Rec. p. 78), and sustained (Rec. p. 81). As this cross-bill was not further prosecuted, particular mention of its allegations is unnecessary. On the 24th day of September, 1864, Johnson, Bigelow, Gage, and Parmelee, by leave of court, filed their several supplemental answers to the cross-bill of Lawrence (Rec. pp. 99, 100, 101, 103), setting forth a payment by Bigelow to Lawrence, of $22,557, on the 12th day of August, 1864, and a release by Lawrence of all matters in controversy, to which answers, replications were filed (Rec. p. 116), although they do not appear in the record. The cause was finally heard upon the cross-bill of Lawrence, the original and supplemental answers thereto, replications and evidence introduced to sustain the allegations of the cross-bill and answers thereto. The evidence, so far as relates to the questions presented for the consideration of this Court, may be briefly stated. The cross-bill of Lawrence alleges the execution and delivery of the deed from Bigelow, Gage, Parmelee, and Johnson, to Lawrence, marked "Exhibit D" (Rec. pp. 22, 29), and the allegation is admitted by the defendant's answers (Rec. pp. 34, 41, 59, 67). The cross-bill of Lawrence also alleges the execution and delivery of the agreement by which Bigelow, Gage, Parmelee, and Johnson, became obliged to pay Lawrence $50,000, with interest thereon, at the rate of ten per cent. per annum, marked "Exhibit E" (Rec. pp. 22, 29), and the allegation is admitted by the defendant's answers (Rec pp. 34, 41, 59, 67). It further appears that the bond from Bigelow, Gage, Johnson and Parmelee, to Lawrence, dated September 15th, 1856, conditioned for the payment of the two per cent. additional interest, was executed and delivered at the same time as the deed and other agreement; and that the three instruments, by reference to each other, and by the acts of the parties, constituted parts of one and the same transaction. Samuel C. Lawrence gives a copy of this bond (Rec. pp. 90, 96), and Bigelow, a competent witness for that purpose (Rec. pp. 122, 123), states that the bond for the two per cent. additional interest, was executed and delivered at the same time with the other papers.

The bond, as well as the other papers, was drawn by Judge McAllister, and he states that they were all executed as part of one transaction (Rec. p. 138. The evidence establishes that the rate of interest Bigelow, Gage, Johnson, and Parmelee agreed to pay, and which Lawrence stipulated to receive, was twelve per cent. per annum; and that interest at that rate was paid by Bigelow and his associates, to Lawrence, up to April 1st, 1861, the whole amount of such payments being $27,000 (Rec. pp. 123, 124). It is admitted that, on the twelfth day of August, 1864, Bigelow paid to Lawrence, on account of the loan mentioned, the further sum of $22,557 (Rec. pp. 107, 163).

The cause was first heard before the Superior Court of Chicago, on the twelfth day of January, 1866; and from the decree of that court, Parmelee, Gage and Johnson, prosecuted an appeal to term of the Supreme Court of the State, held in April, 1866. The cause was heard and decided at that term, but by a rule of practice of that court, Lawrence was allowed until the next term, held in April, 1867, to file a petition for a rehearing. In the meantime, the General Assembly of the State of Illinois passed the following act:

AN ACT CONCERNING THE REMEDY UPON THE CLASS OF CONTRACTS THEREIN REFERRED TO.

Whereas, by an act entitled "An act to legalize ten per cent. interest, when it is agreed upon between parties," approved January 31, 1857, it was enacted by the Legislature of Illinois, that all laws in conflict with said act, and all laws providing for penalties, for taking or contracting for more than the legal rate of interest, were thereby repealed; and whereas, difficulty exists as to the construction and effect of said acts, therefore,

SECTION 1. Be it enacted, by the people of the State of Illinois, represented in the General Assembly, that in all suits upon written contracts made while the act entitled "An act to amend the interest laws of this State, approved January 30, 1849, was in force, and prior to the passage of the interest law, approved January 31, 1857, abolishing all laws providing for penalties for taking or contracting for more than the legal rate of interest, wherein (in any such contract,) a higher rate of interest than ten per cent. per annum was reserved, and when the fact of usury is

insisted upon in the pleadings in the suit, and proven, the creditor shall forfeit all the excess of the interest over the rate it was competent for the parties, at the time of contracting, to reserve in writing, and shall forfeit no more; and no portion of the interest which the debtor may have voluntarily paid upon his contract, shall be deducted from the principal.

SEC. 2. This act shall take effect, and be in force from and after its passage.

Approved February 28th, 1867.

At the April term, 1867, of the Supreme Court, a rehearing was granted, and the decree of the court below reversed and the cause remanded. (See *Parmelee v. Lawrence*, 44 Ill., 405). The cause was again heard before the Superior Court of Chicago, June 17th, 1868, and a decree rendered for the complainant, by which effect was given to the above act, to the General Assembly of Illinois, of February 28th, 1867, from which decree Gage and Parmelee prosecuted an appeal to the term of the Supreme Court of the State, held in September, 1868. The cause was heard at that term, and taken under advisement. Afterwards, on the 27th day of March, 1869, the General Assembly of the State of Illinois, passed the following act:

AN ACT TO AMEND AN ACT THEREIN NAMED.

SECTION 1. Be it enacted, by the people of the State of Illinois, represented in the General Assembly, that an act entitled "An act concerning the remedy upon the class of contracts therein referred to," approved February 28, 1867, shall not be construed to apply to any suit pending at the time of its passage.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 27th, 1869.

Afterwards, on the 27th day of April, 1869, the Supreme Court affirmed the judgment of the Superior Court of Chicago, from which judgment, Parmelee and Gage prosecuted their writ of error to this court. It appears from the record, that the act of February 28th, 1867, was drawn in question before the Supreme Court of Illinois, on the ground that its provisions were repugnant to the Constitution of the United States; and that the decision of the Supreme Court was in favor of the validity of the pro-

visions of said statute (Rec. p. 172). The questions presented for consideration are,

First. What was the legal extent of the obligation of Parmelee, Gage, Bigelow, and Johnson, to Lawrence, when the contract between them was made?

Second. Was the extent of that obligation changed by the act of the General Assembly of the State of Illinois, approved February28, 1867?

Third. Was such change of the legal obligation of Parmelee, Gage, Bigelow, and Johnson, repugnant to the Constitution of the United States?

I.

What was the legal obligation incurred by Parmelee, Gage, Bigelow and Johnson, when they made their contract with Lawrence?

In form, the agreement was to pay twelve per cent. interest, and argument is unnecessary to show that the same effect will be given to the agreement, as if it was contained in one instrument. The two instruments are to be construed together, and as parts of the same transaction. One instrument provided for the payment of the legal interest, and the other for the usury; and, considered together, make the whole transaction usurious.

The revised statutes of 1845, as amended by the act of 1849, were in force when the contract between the parties was made and entered into, and formed a part of it. By the law then in force, the extent of the obligation of Bigelow, Gage, Parmelee and Johnson, and of the right of Lawrence, was measured and defined. For convenience in their consideration, such statutes as relate to the subject are printed as an appendix hereto. A cursory examination of the common law, and acts of parliament relative to interest, will serve to explain the revised statutes of 1845.

The canon law proscribed the taking of any, the least, increase for the loan of money, as a mortal sin, (Decretal 1, 5, tit. 19, 2 Black. Com. 454,) and it was the origin of the common law rule against interest. The laws of King Alfred prohibited the taking of interest; the chattels of offenders were forfeited to

the King, and their lands escheated to the Lords of the fees, and their remains were not allowed to be interred in consecrated ground. (Horn's Mirror, c. I, sec. 3, and c. 5. 3 Coke's Inst. 151.) The usurer was punished by the church as well as by the civil authorities. By *Magna Charta* sheriffs were required to inquire in their *Tourns* of usurers, (22 Viner's Abr. 292,) and the justices in *eyre* were especially charged with the apprehension and punishment of Christian usurers. (Bracton, b. 3, pp. 116, 117; Fleta, book 2; Coke Inst. 151.) Lord Coke says, divers were indicted for taking usury before justices in *eyre*, and some were pardoned by the King, and others not. The goods and chattels of an usurer were forfeited to the King, as if they were those of a thief, and his heirs were incapable of inheritance. (Customs of Normandy, c. 20; Glanvil, book 7, c. 16; Fleta, book 2, c. 50; Coke's Inst. 151.) Lord Coke declares the taking of interest directly against the law of God, and says that by the statutes of 3 Hen. VII, and 11 Hen. VII, all interest was prohibited. Usury (he says) is not only against the law of God, and the laws of the realm, but against the law of nature. The statute of Merton (20 Hen. III, c. 5,) was enacted for the punishment of usurious Jews, but at that time, and before the conquest, it was unlawful to take interest. The statutes of 3 Hen. VII, c. 5 and 6, and 11 Hen. VII, c. 8, extirpated Jews and takers of interest, from the realm.

As early as the 26 Edw. III the courts of England held that no action could be maintained upon an usurious contract (22 Vin. Abr., 292; 26 Edw. III, 71); and afterwards *in Banco Regis* it was solemnly adjudged "if a man promises to pay use " for the forbearance of money, according to the rate of £10 for " the £100 per annum, though this is not made void by any " statute, yet it is void by the common law, and not any good " consideration to maintain an action" (1 Viner's Abr., 297). Hawkins, in his Pleas of the Crown (book 1, c. 82), says, that by the common law it was absolutely unlawful to take any kind of interest, or usury, as it was then called, for the use of money. Hume says: "In 1546 a law was made for fixing the interest " of money at ten per cent.; the first legal interest known in " England. Formerly all loans of that nature were regarded

"as usurious. The preamble of this very law treats the interest "of money as illegal and criminal." Mr. Jefferson, in a letter to Mr. Hammond (Vol. 1 Am. State Papers, p. 367), says, that in England all interest was against law until the statute of 37 Hen. VIII. Chitty, Comyn, Ord, Plowden, Blydenburg, and other elementary writers, have arrived at the same conclusion. Notwithstanding this array of authority in favor of the proposition, that all interest was unlawful at the common law, it has been doubted whether the taking of reasonable interest was more than a spiritual offence, subjecting the offender to ecclesiastical censure. But it will be remembered that ecclesiastical censures were enforced by the secular authorities. The courts of that country could not allow the recovery of interest so long as they were required to enforce ecclesiastical sentences against persons for receiving it, and Acts of Parliament were necessary to legalize the taking of interest so as to free the act from ecclesiastical censure, and leave the common law courts at liberty to enforce contracts for its payment. The statute of 37 Hen. VIII, c. 9 (1546), was the first act allowing interest to be taken; but the prejudices of the people were so strong that it was repealed by the 5 & 6 Edw. VI, c. 20. By the 13 Eliz., c. 8, the statute of 5 & 6 Edw. VI, was repealed, and the act of 37 Hen. VIII, c. 9, was revived. The territorial legislature of Illinois seem to have carefully considered the law of England relative to interest, and in adopting the common law of that country, and the Acts of Parliament made in aid thereof prior to the fourth year of James I, the Acts of 37 Hen. VIII, c. 9, and 13 Eliz., c. 8, were specially excepted, but at the same time a law was passed regulating the interest of money. The same careful consideration of the subject, and the same legislation was continued by the General Assembly of the State, at its first session in 1819; and from that time until 1845, when the statutes were revised, either from a doubt as to the common law, or from necessity, the whole subject of interest was regulated by statute.

The revised statutes of 1845, relative to interest, were *declaratory*, *prohibitory*, and *penal*, and regulated the whole subject. Particular cases were enumerated, in which interest might be taken and recovered, and the well settled construction of the

statutes was, that interest could not be recovered in cases not enumerated.

Sammis v. Clark, 13 Ill., 544.

The first section of chapter 54, R. S., declared that the rate of interest upon the loan or forbearance of money, goods, or things in action, should continue to be *six per cent. per annum.* Under this section, no interest was recoverable, except by virtue of an agreement, express or implied.

13 Ill., 544.

It permitted parties to contract for the rate of interest mentioned, and by necessary implication, did not permit them to contract for a higher rate. The second section related to the allowance of interest as damages for the non-payment of money after it became due. The third section prohibited parties from taking or receiving a higher rate than the one prescribed. The fourth, fifth and sixth sections, imposed penalties upon the lender for contracting for, taking or receiving, a higher rate than the one allowed, and prescribed the mode of recovering them. Ordinarily the imposition of a penalty for making a contract, implies a prohibition, and renders the contract void; but such is not the rule where it appears that the legislature did not intend such consequences.

Smith v. Manhood, 14 M. & W., 452.

The penalties imposed by the revised statutes of 1845, were to be deducted from the debt, clearly showing that the legislature did not intend to render the contract absolutely void. The operation of the law, upon a contract providing for a higher rate of interest than *six per cent.*, was to render it inoperative for the excess. The legal effect of such a contract was happily expressed in Seegar v. Seegar, 19 Ill., 121, in which the court said: "The "law in effect said, now, no matter what rate of interest you "may express on the face of the note above six per cent., you "shall be entitled to recover six per cent. and no more—that is "the extent of your legal rights and obligations under the note, "though you may use language which does not accurately "express the extent of this legal right. At the time the note "was made, this law entered into and formed a part of it. In "legal effect, the maker only promised to pay six per cent."

Attention is called to some further authorities, showing the well settled construction of the revised statutes of 1845.

Shirley v. Welty, 19 Ill., 623, was an action on a promissory note for money loaned in 1851. The rate of interest agreed upon was twenty per cent. The court held that the plaintiff was only entitled to recover six per cent., and the court say, that the agreement in that case amounted to a contract to pay six per cent., and nothing more.

Nichol v. Stewart, 21 Ill., 106, was an action on a promissory note for money loaned in 1856. The rate of interest agreed upon was twenty-four per cent. per annum. The plaintiff was allowed to recover only six per cent. The court say that the statute "merely modifies the contract, so that, if the defendant shall insist upon it, no matter what the terms of the contact may be, he shall only be bound to pay the principal sum, and legal interest."

Dooley v. Stipp, 26 Ill., 88, was a bill in chancery to recover back interest paid in excess of six per cent. The rate of interest agreed upon was fifteen per cent., and the complainant was allowed to recover the excess over six per cent.

Farwell v. Meyer, 35 Ill., 53, was a bill in chancery to enjoin the collection of a judgment entered by virtue of a warrant of attorney. The plaintiff, in the judgment, was allowed to recover only six per cent.

Matthias v. Cook, 31 Ill., 83, was an action on a promissory note. The defendant asked the court to instruct the jury that he was entitled to a deduction of all interest paid over ten per cent., but the court instructed that he was not so entitled. The court say: "No reason is perceived why the interest above "ten per cent. should not be deducted, and, therefore, the in- "struction was erroneous;" and, if the defendant had insisted upon a deduction of the interest above six per cent., no reason is perceived why he was not entitled to it.

It is a fundamental rule of the common law, that an obligation of different parts, where some of them are lawful, and the others not, is good for so much as is lawful, and void for the rest, whether the covenants and clauses are separate or not.

1 Wm. Saund, R. 66, a, notes 4, d., and cases cited.
Howe v. Synge, 15 East, 440.

And, in accordance with this rule, the supreme court of Illinois held a contract to repay money with interest at a higher rate than six per cent., valid as to the principal sum and legal interest, and void as to the residue. In legal contemplation, such contracts read: I promise to pay the money borrowed, with interest at the rate of six per cent. per annum.

But it is contended that, as the act of 1849 allowed money to be loaned at such rate of interest, not exceeding ten per cent., as the parties might agree upon, the contract, to pay interest, in this case, was only unlawful for the excess above ten per cent. The prohibition, of the revised statutes of 1845, against taking more than six per cent., remained in full force, excepting where an agreement was made for not more than ten per cent. The act of 1849 did not establish ten per cent. as the rate of interest for money loaned, but simply allowed parties the privilege of contracting for a rate not exceeding it, under certain circumstances. If parties did not avail themselves of the privilege, they were not entitled to the benefits of it. Because it was lawful for parties to agree upon a rate not exceeding ten per cent., it did not follow that such was to be the rate, if they made no agreement, (*Turner v. Dawson*, 50 Ill., 85,) nor if they made an agreement not authorized by the act of 1849.

Frazier v. Laughlin, 1 Gil., 364.
Ferguson v. Sutphen, 3 Gil., 547.
Bishop v. Williams, 18 Ill., 103.
Shirley v. Welty, 19 Ill., 623.
Seegar v. Seegar, 19 Ill., 121.
Nichol v. Stewart, 21 Ill., 106.
Dooley v. Stipp, 26 Ill., 88.
Heacock v. Swartwout, 28 Ill., 291.
Mapps v. Sharpe, 32 Ill., 13.
Bond v. Lockwood, 33 Ill., 222.
Sutphen v. Cushman, 35 Ill., 199.
Farwell v. Meyer, 35 Ill., 53.
Clayford v. Sturges, 10 Ohio (N. S.) 440.

It was conceded by the Supreme Court of Illinois, that Lawrence could not recover 10 per cent. interest, if his case rested upon the revised statutes of 1845, and the act of 1849 (*Parmelee*

v. Lawrence, 48 Ill., 331), but that court asserted that inasmuch as Bigelow and his associates might have made a lawful contract for ten per cent. interest, but did not do so, it was competent for the legislature of the state to make a contract between the parties which they themselves never made. One reason given for this conclusion was, that Bigelow and his associates were claiming a vested interest in the penalties imposed by the revised statutes of 1845; that they had no such interest, and therefore it was competent for the legislature to repeal the laws imposing the penalties. The plaintiffs in error claim no interest in the penalties imposed by the revised statutes of 1845, but their claim is, to have their contract construed and enforced in the same manner as if the penalties of that law had been repealed when their contract was made. The revised statutes of 1845, with its penalties repealed, allowed parties to contract for interest at the rate of six per cent. per annum, and forbid the taking, receiving or contracting for a higher rate without any penalty whatever. As amended by the act of 1849, the law allowed money to be loaned at such rate of interest, not exceeding ten per cent., as the parties might agree upon, provided the parties made their agreement in conformity with the amendatory act; but as the parties in this case did not make their agreement in conformity with the act of 1849, the question is, what effect did the provisions of the law of 1845, without its penalties, have upon the contract. It will be noticed that the cases of *Seegar v. Seegar*, 19 Ill., 121; *Shirley v. Welty*, 19 Ill., 623; *Nichol v. Stewart*, 21 Ill., 106; *Dooley v. Stipp*, 26 Ill., 88; *Heacock v. Swartwout*, 28 Ill., 291; *Mapps v. Sharpe*, 32 Ill., 13; *Bond v. Lockwood*, 33 Ill., 222, and *Sutphen v. Cushman*, 35 Ill., 199, all arose under the revised statutes of 1845, as amended by the act of 1849, and were all heard and determined after the penalties of the revised statutes had been repealed. The Supreme Court of Illinois has, in the several cases mentioned, again and again reiterated the rule that contracts made under the law of 1845, as amended by the act of 1849, were without regard to the penalties, in contemplation of law, contracts for the payment of six per cent. interest, and nothing more. It is suggested that the act of 1857 substituted its penalties for those imposed by the

law of 1845; and that the act of 1867 substituted its penalties for those of the act of 1857, but the repeal of laws imposing penalties, and substituting new ones for past offenses, has never been tolerated in any civilized community. The subject may be interesting to Lawrence, but Bigelow and his associates have no interest therein. Another reason given by the Supreme Court of Illinois for its decision is, that although the words used by the parties in making their contract, had no legal effect to make a contract for ten per cent. interest when they were used, and created at that time no such legal obligation, yet as they were apt words, to some extent, to use in making a legal contract of that nature, the legislature, while it cannot give effect to the language as used, may so far give effect to it, as to make a contract which the parties might have made, but which they did not make. The power of the legislature in this respect will be noticed hereafter.

Again, before this court can declare that an act of a state has impaired the obligation of a contract, it must first determine the true extent of the obligation claimed to have been impaired. It will be noticed that the contract between the parties made no provision whatever for the payment of interest after the expiration of the time when the money borrowed was to be repaid. Lawrence was entitled to interest thereafter by operation of law, and not by any provision of the contract. Such is the settled construction of this court as to contracts of this nature, and in determining the extent of the obligation, said to have been impaired, the court will be governed by its own well settled rules relative to the interpretation and construction of contracts.

Brewster v. Wakefield, 22 How., 118.

II.

Did the act of February 28, 1869, enlarge the legal obligation of Bigelow, Gage, Parmelee and Johnson?

By this act, Lawrence obtained a decree for $26,035.78, which, it is conceded, he could not have recovered had the act not been passed. As we have seen, the legal obligation of Bigelow, Gage, Parmelee and Johnson, was to pay $10,000 on the first

day of October, in the years 1857, 1858, 1859, 1860 and 1861 respectively, with interest at the rate of six per cent. per annum, to the times of payment. From the times when these several sums of money were payable by contract, the law, and not the contract, affixed six per cent. per annum, damages for their non-payment.

The decree which Lawrence obtained, was for ten per cent. per annum until the times stipulated for the payment of the principal, and for ten per cent. per annum, damages after that time. If the act of 1867 had not been passed, the decree of Lawrence would have been for $25,052.79; and by means of that act he obtained a decree for the additional sum of $26,035.78.

III.

Was the change of the legal obligation of Parmelee, Gage, Bigelow and Johnson, repugnant to the constitution of the United States?

Before considering the effect of the act of 1867, upon the legal obligation of Parmelee, Gage, Bigelow and Johnson, some further suggestions will be made as to its extent, after the times stipulated for the payment of the principal. Undoubtedly the parties might have contracted for a rate of interest after the day stipulated for the payment of the principal, but they did not so contract in this case. The agreement between the parties in this respect is evidenced by the contract to reconvey the property upon payment of the $50,000 in installments, with ten per cent. interest on each, and by the bond for the additional two per cent. interest. The fact that the bond only provided for the payment of the addditional two per cent. until maturity of the principal, shows conclusively that the parties did not contract for a rate of interest after that time. In order to determine whether the act of 1867 was an *ex post facto* law, this court must declare for itself the true construction of the contract, and the obligations of the parties. As was said by the court, in *Ohio Life Insurance and Trust Company* v. *Debolt*, 16 How. 433, "it would be impossible for this court to exercise "any appellate power in a case of this kind, unless it was at "liberty to interpret for itself the instrument relied upon as the

"contract between the parties;" and the remark is equally applicable to cases where the question is, whether an act of the Legislature of a state is of an *ex post facto* nature. The provision of the federal constitution against *ex post facto* laws, would be nugatory if the decision of the state court was held conclusive as to the law before the act in question was passed.

Jefferson Branch Bank v. Skelly, 1 *Black* 443.
Bridge Proprietors v. Hoboken Co., 1 *Wall.* 145.

The legal obligation of Parmelee, Gage, Bigelow and Johnson, after the time stipulated for payment, is settled in this court, in *Brewster v. Wakefield*, 22 How. 118, upon principle and authority. The reasoning of the court is so conclusive that nothing can be added thereto. The case of *Phinney v. Baldwin*, 16 Ill., 108, may be referred to by counsel for appellee, as establishing a different rule, but the case, when examined, will be found simply to construe a peculiarly worded contract, and not to establish a general rule. Besides, the construction of a contract is not one of those questions where the federal courts are required to follow the decisions of a state court. Having ascertained the extent of the legal obligation of Parmelee, Gage, Bigelow and Johnson, and the duties which the law imposed upon them before the passage of the Act of 1867, it remains to be considered whether the effect given to that Act by the Supreme Court was in violation of the constitution of the United States. It will be noticed that the Act of 1867 was not in force so far as it relates to this case, when the final decree of the Supreme Court was rendered, but that court gave effect to the Act, notwithstanding its repeal, contrary, it is submitted, to the well settled rule upon the subject.

Cooley on Cons. Lim., p. 381, and cases cited.

A law imposing an additional pecuniary obligation for a past neglect to discharge a legal duty, is in its nature *ex post facto.* It denounces a past act, and imposes a penalty not existing when the neglect occurred. To make a law an *ex post facto* one, it is not necessary that it should denounce the neglect as a crime, or denominate the additional obligation imposed, as a fine or penalty. The nature of a law is determined by its effect. If the Act of 1867 had declared that every person who had theretofore

neglected to pay his promissory notes as they became due, should be deemed guilty of a misdemeanor, and on conviction thereof should pay to the holder of such notes, as a penalty for such neglect, four per cent. per annum, its legal effect would be precisely the same as was given to it by the Supreme Court of Illinois. The design of the constitution was, to prevent practical injustice by the imposition of obligations for past acts and neglects, when no obligation existed at the time the act was done or the neglect occurred. The Act of 1867, as construed by the Supreme Court of Illinois, declares that the neglect of Parmelee, Gage, Bigelow and Johnson, was no misdemeanor, but a great moral delinquency, for which they were to be amerced in a large sum of money, not as a fine or penalty, but as a proper compensation to Lawrence for their neglect. It is submitted that the provision of the federal constitution, relative to *ex post facto* laws, cannot be evaded by such a construction, nor by any form of words, where the effect produced is the one which the framers of the constitution intended to prohibit.

C. BECKWITH,
For Appellants.

APPENDIX.

AN ACT DECLARING WHAT LAWS ARE IN FORCE IN THIS STATE.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same, that the common law of England, all statutes or acts of the British parliament, made in aid of the common law, prior to the fourth year of the reign of King James the I, excepting the second section of the sixth chapter of XLIII Elizabeth; the eighth chapter XIII Elizabeth, and ninth chapter XXXVII Henry VIII; and which are of a general nature, and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force, until repealed by legislative authority.

Approved Feb. 4th, 1819.

AN ACT REGULATING THE INTEREST OF MONEY.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that creditors, (except as hereinafter excepted,) shall be allowed to receive, at the rate of six per centum per annum, for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing, on any judgment recovered before any court or magistrate authorized to enter up the same, within this State, from the day of signing judgment until the effects be sold, or satisfaction of such judgment be made, likewise on money lent, on money due on the settlement of accounts from the day of liquidating accounts between the parties, and ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay of payment: *Provided always*, That nothing in this act contained, shall be so construed as to limit the rate of interest, for the payment of which an express contract hath been made: And provided, also, that no bank or monied institution shall have the right to demand or receive a greater or higher rate of interest than six per centum per annum, and all and every species of contract made by any bank or monied institution, by which a greater or higher rate of interest shall be stipulated to be paid, shall be, and the same is hereby declared, to be fraudulent and wholly void.

Approved March 2d, 1819.

AN ACT TO REGULATE THE INTEREST OF MONEY.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the rate of interest upon the loan or forbearance of any money, goods, or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate, for a greater or less sum, or for a longer or a shorter time; *Provided*, that when the parties expressly agree upon an amount of interest not exceeding the rate of twelve per centum per annum, it shall be legal, anything in this section to the contrary notwithstanding, and the several courts in this State are hereby required to give judgment accordingly.

SEC. 2. No person or corporation shall, directly or indirectly, accept or receive in money, goods, discounts, or things in action, or in any other way, any greater sum, or greater value for the loan, forbearance or discount, of any money, goods, or things in action, than as above described.

SEC. 3. Whenever, in any action brought on any contract or assurance for the payment of money, or any other thing, it shall appear to the court before which such action shall be tried by the pleading on the case, and on application of the defendant, that a greater rate of interest shall have been directly or indirectly reserved, discounted or taken, than is allowed by this act, the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the whole interest reserved, discounted or taken, and shall have judgment and execution for the balance only which may remain due upon said contract or assurance, after deducting three-fold the amount of said interest, one-third part of which shall be paid to the defendant, and the remaining two-thirds shall be paid into the county treasury of the county in which such suit shall have been instituted.

SEC. 4. That if any person or corporation shall directly or indirectly, contract to accept or receive in money, goods, discounts, or things in action, any greater sum or greater value for the loan, forbearance or discount of any money, goods, or things in action, than is prescribed by this act, he, she or they, shall forfeit and pay to the person sueing for the same, three-fold the amount of the whole interest so contracted to be reserved, discounted or taken, *Provided*, said suit be not commenced by either of the contracting parties: and if so, then the amount so recovered shall be paid into the county treasury of the county where such suit shall have been instituted.

SEC. 5. Every person who, for any such loan, discount or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives may recover, in an action against the person who shall have taken or received the same, and his personal representatives, three-fold the amount of the money so paid, or value delivered above the rate aforesaid, either by an action of debt in any court

having jurisdiction thereof, or by bill in chancery in the circuit court, which court is hereby authorized to try the same: *Provided*, said action shall be brought or bill filed within two years from the time when the right thereto accrued.

Sec. 6. In the trial of any action wherein it shall appear by the pleadings that the fact of usury shall be put in issue, it shall be lawful for the debtor, the creditor being alive to become a witness, and his testimony shall be received as evidence, and the creditor, if he shall offer his testimony, shall be received as a witness, together with any other legal evidence that may be introduced by either party.

Sec. 7. This act to take effect from and after the first day of April next.

Approved Feb. 28th, 1833.

REVISED STATUTES 1845, CHAPTER 54.

INTEREST.

Section 1. The rate of interest upon the loan or forbearance of any money, goods or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or a shorter time.

Sec. 2. Creditors shall be allowed to receive at the rate of six per centum per annum, for all moneys after they become due, on any bond, bill, promissory note, or other instrument of writing; on any judgment recovered before any court or magistrate authorized to enter up the same within this State, from the day of signing judgment until the effects be sold, or satisfaction of such judgment be made; likewise, on money lent, on money due on the settlement of accounts from the day of liquidating accounts between the parties, and ascertaining the balance: on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay of payment.

Sec. 3. No person or corporation shall, directly or indirectly, accept or receive in money, goods, discounts, or things in action, or in any other way, any greater sum or greater value, for the loan, forbearance or discount of any money, goods, or things in action, than as above described.

SEC. 4. Whenever, in any action brought on any contract or assurance, for the payment of money, or any other thing, it shall appear to the court before which such action shall be tried, by the pleading on the case, and on the application of the defendant, that a greater rate of interest, shall have been directly or indirectly reserved, discounted or taken, than is allowed by this chapter, the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the whole interest reserved, discounted or taken, and shall have judgment and execution for the balance only which may remain due upon said contract or assurance, after deducting three-fold the amount of said interest, one-third part of which shall be paid to the defendant, and the remaining two-thirds shall be paid into the county treasury of the county in which such suit shall have been instituted.

SEC. 5. If any person or corporation shall, directly or indirectly, contract to accept or receive in money, goods, discount, or things in action, any greater sum or greater value, for the loan, forbearance or discount of any money, goods, or things in action, than is prescribed by this chapter, he, she or they shall forfeit and pay to the person sueing for the same, three-fold the amount of the whole interest so contracted, to be reserved, discounted or taken. *Provided*, said suit be not commenced by either of the contracting parties; and if so, then the amount so recovered shall be paid into the county treasury of the county where such suit shall have been instituted.

SEC. 6. Every person, who for any such loan, discount or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives may recover in an action against the person who shall have taken or received the same, and his personal representatives, three-fold the amount of the money so paid, or value delivered above the rate aforesaid, either by an action of debt in any court having jurisdiction thereof, or by bill in chancery in the circuit court, which court is hereby authorized to try the same: *Provided*, said action shall be brought, or bill filed within two years from the time when the right thereto accrued.

SEC. 7. In the trial of any action wherein it shall appear, by

the pleadings, that the fact of usury shall be put in issue, it shall be lawful for the debtor, the creditor being alive, to become a witness, and his testimony shall be received as evidence, and the creditor, if he shall offer his testimony, shall be received as a witness, together with any other legal evidence that may be introduced by either party.

SEC. 8. Any township in this State, having school, college or seminary funds to loan, may hereafter loan the same, at any rate of interest not less than eight per cent. nor more than twelve per cent. per annum; the rate to be fixed by a majority of the legal voters of said townships respectively, who shall, at every election for township trustees, vote the rate of interest at which said fund shall be loaned, until their next election for trustees, any law to the contrary notwithstanding.

Approved March 3d, 1845.

AN ACT TO AMEND THE INTEREST LAWS OF THIS STATE.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That from and after the passage of this act, money may be loaned at such rate of interest, not exceeding ten per cent. per annum on each hundred dollars, as the parties may agree upon; anything in the laws of this State to the contrary notwithstanding.

SEC. 2. In the trial of any action brought upon a promissory note or writing, obligatory in any of the courts of this State, wherein is reserved a higher rate of interest than six per cent. per annum, it shall be lawful for the defendant to set up and plead, as a defense in any such suit, that the consideration of said note or writing obligatory, upon which such suit is brought, was not "money loaned," upon which issue it shall be lawful for the debtor, the creditor being alive, to become a witness, and his testimony shall be received as evidence; and the creditor, if he shall offer his testimony, shall be received as a witness, together with any other legal evidence that may be introduced by either party; and if, upon the trial of the said issue, it shall be found that the said note or writing obligatory, upon which such suit is brought, was not given for money loaned, then the said court shall render judgment for the prin-

cipal sum in the said promissory note or writing obligatory, and six per cent. interest thereon.

Approved Jan. 30, 1849.

AN ACT TO LEGALIZE TEN PER CENT. INTEREST, WHEN IT IS AGREED UPON BETWEEN THE PARTIES.

SEC. 1. That from and after the passage of this act, the rate of interest upon all contracts and agreements, written or verbal, express or implied, for the payment of money, shall be six per cent. per annum upon every one hundred dollars, unless otherwise expressly stipulated by the parties, or unless otherwise provided by law.

SEC. 2. That in all contracts hereafter to be made, whether written or verbal, it shall be lawful for the parties to stipulate or agree that ten per cent. per annum, or any less sum of interest, shall be taken and paid upon every one hundred dollars of money loaned, or in any manner due and owing from any person or corporation to any other person or corporation in this State.

SEC. 3. If any person or corporation in this State shall contract to receive a greater rate of interest than ten per cent. upon any contract, verbal or written, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation.

SEC. 4. All laws in conflict with this law, and all laws providing for penalties for taking or contracting for more than the legal rate of interest, are hereby repealed.

Approved Jan. 31, 1857.

Act of 1867—ante page 6.

Act of 1869—ante page 7.

UNITED STATES SUPREME COURT.

DECEMBER TERM, A. D. 1870.

FRANKLIN PARMELEE & DAVID A. GAGE,
PLAINTIFFS IN ERROR,

vs.

DANIEL LAWRENCE,
DEFENDANT IN ERROR.

} Error to The Supreme Court of The State of Illinois.

BRIEF AND POINTS FOR DEFENDANT IN ERROR,

BY

GEORGE PAYSON AND CHARLES A. GREGORY.

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UNITED STATES SUPREME COURT.

DECEMBER TERM, A. D. 1870.

FRANKLIN PARMELEE AND DAVID A. GAGE, *Plaintiffs in Error.* VS. DANIEL LAWRENCE, *Defendant in Error.*	*Error to* *The Supreme Court* *of the* *State of Illinois.*

BRIEF AND POINTS FOR DEFENDANT IN ERROR.

This suit is brought here under the 25th Section of the Judiciary Act, on the alleged ground that a statute of the State of Illinois was brought in question in said suit, and was upheld by the court below, though repugnant to the Constitution of the United States, as impairing the obligation of contracts.

The defendant in error denies, first, the jurisdiction of the court, and asks that the writ of error be dismissed; and, second, if that motion be overruled, he denies that the statute in question impaired the obligation of any contract, and asks that the decree of the court below be affirmed.

A brief statement of the case will enable the court more readily to decide the above propositions.

On the 15th of September, 1856, the plaintiffs in error, together

with Walter S. Johnson and Liberty Bigelow, then partners under the name of F. Parmelee & Co., in Chicago, borrowed of Lawrence, the defendant in error, $50,000, to be used in building Garrett Block, in Chicago.

To secure this money, they gave Lawrence an absolute deed of the land in question, and took back an agreement to re-convey at the end of five years, in which there was also a covenant on their part to pay him the $50,000, with semi-annual interest at 10 per cent. per annum; the principal to be paid in five equal annual installments from October 1st, 1856, or sooner if they chose so to do. On such payment being made, Lawrence covenanted to re-convey.

On the same day they gave Lawrence their personal bond, conditioned that they would, every year, deliver to Lawrence their notes for 2 per cent. additional interest on such sum as should then remain unpaid on said $50,000.

The interest was all paid down to April 1st, 1861, after which no further payment was made till August, 1864, as hereafter shown.

On August 4th, 1863, Bigelow, Gage and Parmelee filed their bill in chancery against Lawrence, in which, concealing the true nature of the transaction, they set up the agreement to re-convey, and claimed that Lawrence covenanted to convey to them the property for $50,000 and interest at ten per cent., free and clear of all incumbrances; that they were ready to pay on receiving such a conveyance, but Lawrence was unable to make title to the land, and never had the fee thereof; that he had demanded the money, and was threatening to eject them.

This bill was sworn to by Parmelee, and an injunction issued thereon, restraining Lawrence from bringing any suit for the money or the land.

Lawrence in his answer showed that the transaction was not, as falsely claimed in the bill, a naked agreement to convey, but a mortgage to secure the loan of $50,000; he also filed his cross-bill for a foreclosure of said mortgage in the usual form.

In their answer to this cross-bill, the complainants claimed, as before, that it was simply an agreement to sell; but further insisted that, if it was a mortgage, then the loan was usurious, and that Lawrence thereby forfeited, under the laws of Illinois, three-fold the whole interest so received. They here *set up*, *for the first time*, that the rate of interest was twelve per cent. instead of ten, as they had alleged in their bill; and *for the first time* allege that they gave Lawrence their bond for the two per cent. interest, as above shown.

On the 24th of September, 1864, Bigelow, Gage and Parmelee filed their supplemental bill, wherein they set up a payment, in August, 1864, by Bigelow to Lawrence, of $22,557, in full satisfaction of Bigelow's share, and a release of Bigelow by Lawrence, under his hand and seal.

This release was in the usual form, with the addition of this final clause:

"Nothing herein contained shall in anywise affect my rights or demand against said Parmelee, Gage, or Johnson, or their interest in said property."

They claimed that the effect of this release, notwithstanding this final clause, was absolutely to discharge them all; and prayed the relief prayed in their original bill, and that Lawrence might re-convey, &c.

They also filed an additional answer to the cross-bill, setting up this release. Lawrence answered the supplemental bill, alleging that he had been induced to execute the release by the fraudulent representations of Bigelow.

Replications were filed, and proofs taken, and in 1865 a final decree was entered by the Superior Court of Chicago, that the release to Bigelow did not discharge his co-obligors, and that they should pay Lawrence the amount remaining due, with only six per cent. interest from the date of the last payment, but he to retain the twelve per cent. interest already paid.

From this decree Parmelee, Johnson and Gage appealed to the Supreme Court of Illinois. At the April term, 1867, that court, after full consideration, and after a rehearing had been allowed, held, first, that the release did not discharge the other partners. They say on this part of the case: "It is impossible to read "the evidence in this case without a conviction that this whole "scheme of procuring a separate release to Bigelow was a plan "contrived in Chicago, for the purpose of escaping the full pay- "ment of the debt. It was a dishonest scheme, and it is our duty "so to pronounce it." *Parmelee v. Lawrence*, 44 *Ill.* 413.

The court also held, secondly, that the usurious interest already paid to Lawrence, should be credited on that part of the principal which still remained due. And, thirdly, that Lawrence should be allowed interest at the rate of ten per cent. from the beginning.

The case was accordingly reversed and remanded, and June 17th, 1868, a decree was entered in the Superior Court of Chicago, in accordance with the above opinion. By this decree Gage and Parmelee were required to pay Lawrence $51,281.99, being the amount then due on the mortgage, including ten per cent. interest, and deducting all that had been paid by way of usury, and the amount paid by Bigelow; or, in default of such payment, the premises were to be sold, and execution issued against the property of Gage, Parmelee and Johnson, for the balance, if any, remaining unsatisfied, after such sale.

From this decree Gage and Parmelee again appealed to the Supreme Court of Illinois, and at the September term of that court, 1868, the decree of the court below was affirmed in full.

The plaintiffs thereupon sued out the writ of error from this court, and now assign as their sole ground of error, that the Supreme Court of Illinois, in rendering the final decree in this case, rested its decision on a certain statute of that State, which, as plaintiffs allege, impaired the obligation of their contract, and is therefore repugnant to the Constitution of the United States.

This brings us to the first of the two main propositions stated above, viz: that,

I.

THIS COURT HAS NO JURISDICTION IN THIS CASE.

And as to this, we say,

First, *That it does not appear by the record that any such statute was brought in question in the case.*

If we search the record from beginning to end, we shall fail to find a single word from which it appears, either expressly or by necessary intendment, that the question was made. There is no mention of it in the pleadings, nor in the evidence, nor in the decree.

No one, in short, could discover, by reading the record, either what the statute was, or even that it had any existence.

How, then, can it be said that this statute, or the validity of this statute, was brought in question in this suit?

It cannot be because it is found in the opinion of the court below, for it has been several times decided that that opinion is no part of the record.

Williams v. Morris, 12 *Wheat.*, 117.
Railroad Co. v. Rock, 4 *Wall.*, 179, where the printed report of the case was offered.
Rector v. Ashley, 6 *Wall.*, 142.
Gibson v. Choteau, 8 *Wall.*, 314.

Then is the certificate of the presiding judge sufficient for this purpose?

Plaintiffs in error insist that it is, and possibly may be right, but we do not so understand the law. Our understanding is that if it *first appear* from the record itself that such a question *may* have arisen, then the certificate may come in to show that it *was* actually

raised and decided. But unless it does so appear from the record, then, no matter what may be stated in the certificate, it is not enough. This seems clearly decided in *Armstrong v. The Treasurer of Athens Co.*, 16 *Peters*, 285, 286, where the court state fully the principles governing cases of this sort.

The court say: "In the case now before us, the presiding judge "has certified on the record that the validity of a statute of the "State was drawn in question, on the ground that it was repugnant "to the Constitution of the United States, and that the decision "was in favor of the validity of said statute; and this certificate "is certified by the clerk, as a part of the record. We presume "that the certificate of the presiding judge was made by the au- "thority of the court; and *as this bill and answer show that such* "*a point might have arisen*, and this certificate on the record states "that it did arise, and was decided, the case comes within the fourth "clause above mentioned, and this court must take jurisdiction."

In that case, then, we see that the *bill and answer* first showed that such a question *might* have arisen, and therefore the certificate was received to show that it actually did arise. It is clear, however, that unless the record had in some way suggested the question, the certificate would have been of no avail.

Again, in *Railroad Company v. Rock*, 4 *Wallace*, 177, the latest decision on this question, the court distinctly hold that a certificate of the judge alone is not sufficient.

The court say, page 180: "It is probable that counsel, in the "argument of the case in the Supreme Court of Iowa, insisted that "these matters were involved, and that the chief justice felt bound "to certify, when requested, that they were drawn in question. "But if the record does not show that they were necessarily drawn "in question, this court cannot take jurisdiction to reverse the de- "cision of the highest court of a State, upon the ground that coun- "sel brought them in question in argument."

So in *Lawler v. Walker* 14 *Howard*, 149, cited in the last case, the court say, speaking of the effect of such a certificate: "The conflict of the State law with the Constitution of the United States, and a decision by a State court, in favor of its validity, must appear on the face of the record, before it can be re-examined in this court. It *must appear in the pleadings of the suit*, in the instructions asked for, or from exceptions taken. It must be that such a question was necessarily involved in the decision, and that the State court would not have given judgment without deciding it."

In the case at bar there were, of course, no instructions or exceptions, and the question could not have been raised in that way; but no one can deny that there was plenty of pleading; and it was there the question should have been presented.

Certainly the least that parties can do, who intend taking a case in this way to the Supreme Court of the United States, is to raise the question at the first opportunity, and in the most unmistakeable manner, by the appropriate plea.

And having done that, the decree might very well be made to show that the question was actually decided, or the certificate of the presiding judge may perform the same office. But here, as we have seen, there is nothing of the kind. Neither the pleadings nor the decree contain any reference to this statute. There is absolutely nothing but the certificate.

It may be claimed, however, that it appears from the whole record that the court below could not have rendered the decree it did without asserting the validity of the statute in question; that the decree expressly gives the defendant ten per cent. interest, and that this must have been done by virtue of the statute, for that, before that statute, only six per cent. could have been allowed.

To this we reply—first, that there is nothing in the record to show that the court could not have given ten per cent. just as well without the statute as with it; and, second, that, even if this did appear from the record, there would still be nothing to show that the

validity of the statute was questioned, or even that such a statute was ever mentioned.

In short, there is not a word in this whole record, until we come to the certificate of the judge, from which this court could infer even the existence of the statute in question.

We go farther, however, and urge as a second reason why the court should not take jurisdiction, that the court below, in rendering its decree, did not need to refer to this statute at all, but could have arrived at the same result just as well without it. Or, in other words, there is another and wholly independent ground, on which the decree can be sustained.

To illustrate this proposition, it becomes now necessary, for the first time, to set out the statute in question, as well as the other statutes involved.

The first statute in order is that of 1845. By this statute the rate of interest in all cases was fixed at six per cent.; and by the fourth section it is provided that

"Whenever in any action brought on any contract, for the payment of money, "it should appear by the pleadings, and on application of the defendant, that a "greater rate had been reserved, the defendant should recover his full costs, and "the plaintiff should forfeit three-fold the whole interest reserved, and should have "judgment for the balance only, after deducting three-fold the interest, one-third "part of which should be paid to the defendant, and the remaining two-thirds should "be paid into the county treasury."

By a second statute, passed in 1849, it was further enacted that

"From and after the passage of said act, money might be *loaned* at such rate of "interest, not exceeding ten per cent., as the parties might agree upon; anything "in the laws of this State to the contrary notwithstanding."

And by the second section, that

"In the trial of any action on any promissory note, or writing obligatory, "wherein is reserved a higher rate of interest than six per cent., it shall be lawful for "the defendant to set up and plead, as a defence, that the consideration of said note, "&c., was *not money loaned*; and if it should be found that said note, &c., was *not* "given for money loaned, the court shall render judgment for the principal and six "per cent. interest."

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"Section 2. This act shall take effect, and be in force from
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These were the only acts in force when the contract in this case was made.

In 1857, after the making of the contract, but before the filing of the bill, a third act was passed, providing

"That thereafter the rate of interest on all contracts should be six per cent., "unless otherwise expressly stipulated by the parties, or otherwise provided by "law."

And in section second

"That in *all* contracts it should be lawful for the parties to stipulate for ten per "cent. or any lesser rate."

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"If any person should contract to receive more than ten per cent., he should "forfeit all the interest, and recover only the principal."

By the fourth section,

"All laws in conflict with this law, and all laws providing for penalties for taking or contracting for more than the legal rate of interest were repealed."

In 1867, after the filing of the bill in this case, the Legislature of Illinois passed the act, the validity of which is here disputed, and which we now present verbatim.

"Whereas by an act entitled "An Act to legalize ten per cent. interest, when it is agreed upon between parties," approved January 31, 1857, it was enacted by the Legislature of Illinois that all laws in conflict with said act, and all laws providing for penalties for taking or contracting for more than the legal rate of interest, were thereby repealed; and, whereas, difficulty exists as to the construction and effect of said acts; therefore,

"Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all suits upon written contracts, made while the act entitled "An act to amend the interest laws of this State," approved January 30, 1849, was in force, and prior to the passage of the interest law, approved January 31, 1857, abolishing all laws providing for penalties for taking or contracting for more than the legal rate of interest, wherein (in any such contract) a higher rate of interest than ten per cent. per annum was reserved, and when the fact of usury is insisted upon in the pleadings in the suit, and proven; the creditor shall forfeit all the excess of the interest over the rate it was competent for the parties at the time of contracting to reserve in writing, and shall forfeit no more; and no portion of the interest which the debtor may have voluntarily paid upon his contract shall be deducted from the principal.

"Section 2. This act shall take effect, and be in force from and after its passage.

"Approved February 28, 1867."

These are all the laws of Illinois relating to interest, and applicable to this case, in force when this case was heard and determined in the Superior Court of Chicago.

Now it is contended by plaintiffs in error, that that court, in decreeing ten per cent. interest to Lawrence, and the Supreme Court of Illinois, in affirming that decree, did act, and must necessarily have acted, solely by virtue of this law of 1867. In the absence of that, it is said, six per cent. is the utmost the court could have awarded; and hence it follows, as a necessary consequence, that in giving ten per cent. the court must have been governed by this law alone.

But we deny that six per cent. is the highest rate of interest that might lawfully have been awarded in this case, even though this act had never been passed. We insist, on the contrary, that it was competent for a court of chancery at any time, to give the mortgagee on a bill to redeem, any rate of interest that should seem fair and equitable, or, at least, any rate not exceeding that allowed by law at the time of the decree.

The interest in such cases is allowed, not merely as interest, not merely because there may be a statute giving interest, but rather because of the well settled and highly equitable rule that he who seeks equity must do equity. And even if there should be in any State a law forbidding any interest, no one can doubt that a court of equity, in the exercise of its ordinary powers, would deem itself fully authorized to impose the same conditions upon the mortgagor seeking to redeem. Or, as it is termed in the books, the party may redeem upon equitable terms)

It may be true that the courts of Illinois never had given more than six per cent. in such cases, previous to this act; but it does not follow that they were limited to that rate, nor that, in a case as aggravated as this, they would not have felt at liberty to exceed it. It must be remembered that the conduct of the mortgagors, from the first, has been such as no court of equity could approve, and such as would fully justify any terms the court might impose.

"The position," says the Supreme Court of Illinois, "which "Parmelee, Gage and Bigelow occupy throughout this entire record, "is not one that entitles them to favorable consideration in solving "whatever doubts there may be as to the manner in which this "instrument (the release) is to be interpreted. They filed their "original bill for the purpose of evading, upon pretexts that were "simply frivolous, the payment of a perfectly honest debt con- "tracted for money borrowed. They obtained an injunction by "utterly misrepresenting, in their sworn bill, the true character of "the transaction, claiming to occupy the position of purchasers, "while, in fact, there had not been one element of a purchase. "When the answer and cross-bill bring the actual state of facts be- "fore the court, they cast about for another mode of evading pay- "ment of an honest debt."

Parmelee vs. Lawrence, 44 *Ill.*, 412.

"It is impossible to read the evidence in this case, without a "conviction that their whole scheme of procuring a separate release "to Bigelow was a plan contrived in Chicago, for the purpose of "escaping the full payment of the debt. It was a dishonest scheme, "and it is our duty so to pronounce it."

Ibid., *p.* 413.

After this they certainly have no right to complain, simply because they are required to pay a part only of what they had agreed to pay, and no more than the law, in force when their contract was made, allowed.

The law of 1849 allowed parties to contract for ten per cent. for money loaned; and we insist that, if the law of 1867 had never been passed, still, under the law of 1849, the court below had ample authority to render the same decree.

In other words, a court of equity, in a case as aggravated as this, by a simple application of the rule that he who seeks equity shall do equity, might well have required of plaintiffs in error the payment of ten per cent., without reference to any statute.

This, we think, can be made to appear beyond all question, by a very simple argument.

Thus it has long been the settled rule in Illinois, that, in all cases of usurious contracts, no matter when made, nor under what statutes, the borrower, seeking relief in equity, shall pay six per cent. interest.

It is also equally well settled, that this interest is exacted not at all by virtue of any statute imposing it, but wholly under the ordinary powers of a court of equity.

And, finally, this rate of six per cent. is not at all a fixed, unchanging rule, but is one depending wholly on the circumstances of the particular case, and the discretion of the court.

In this very case, reported in 48 Ills., 343, the court say, commenting upon certain earlier decisions: "The court, applying "the principle that he who seeks equity must do equity, held that "the complainant must pay interest, notwithstanding the usury; "and, as the court was not proceeding on the ground of enforcing "a contract, it adopted six per cent. as the legal rate. *It might "have adopted either a greater or less rate, according to its sense of "the equity of the case.*"

It appears, then, from this, that the State Court, in the exercise of its ordinary equitable powers, might, before the passage of the act of 1867, and without relying on any legislation, have rendered precisely the same decree as was rendered in the present case.

This being so, this court, if we understand its decisions aright, will not take jurisdiction.

Thus, it was held in *Lawler v. Walker*, 14 *How.*, 149, that such a question (as that of the validity of a law) was *necessarily* involved in the decision, and that the State court *would not have given a judgment without deciding it.*

But, on the other hand, if it appears from the record that the

State court *might* have decided the case on some other ground, this court has no jurisdiction.

Railroad Co. v. Rock. 4 *Wall.*, 177.
Gibson v. Choteau, 8 *Wall.*, 314.

To this it will probably be replied by plaintiffs in error, that the rule above referred to, by which parties seeking equity are required to do equity, is applicable only to a complainant; that *they* are not seeking any relief, and that, therefore, they are not within the rule.

We deny, utterly, the truth of this proposition. We deny that plaintiffs in error, so far as the application of this rule is concerned, ever occupied the position of defendants.

They are defendants, it is true, in the cross-bill, and it may be that, in an ordinary case, a court of equity could not impose conditions upon them.

But in their original bill, and which formed the foundation of this whole litigation, they expressly state that they have been at all times ready and willing, and are now ready and willing, and have offered, and do now offer, to pay to the said Daniel Lawrence, the full amount of the principal and interest in the said articles of agreement mentioned, on the execution and delivery to them by said Lawrence of a deed in due form, conveying and assuring to them, free and clear of all incumbrances, the land described, &c.

Printed Record, page 5.

And in the final decree, which is here sought to be reversed, it is decreed that said Gage and Parmelee pay to said Lawrence the sum of $51,281.99, with interest, &c., and that, upon such payment being made, said Lawrence do release and quit-claim the interest acquired of said complainants and Johnson, and held by him, in and to said land, with covenants against his own acts, &c.

Printed Record, page 165.

Here, then, is a distinct offer by complainants to pay to Lawrence the full amount of his claim, with interest at ten per cent.

That offer, it is true, is based upon his conveying the land to them, free and clear of all incumbrances. But this he is decreed to do. For, though he is required only to execute a special warranty deed, yet, inasmuch as the complainants had previously conveyed to him with full covenants of warranty, (*Printed Record, pp.* 20, 21,) by deed absolute in form, but intended simply as a mortgage, they are estopped, of course, from denying that a special warranty would vest in them a perfect title, or, at least, as good a title as they had conveyed to him.

This being the case, what would have been the proper decree for the court to render on this original bill, supposing the cross-bill to have never been filed?

Clearly that the complainants should pay the full amount of principal and interest, as they had offered to do, and that, thereupon, Lawrence should reconvey, with covenants against his own acts.

That is, that precisely the same decree, so far as this question of interest is concerned, should have been entered, as was finally entered in this case.

We are supposing, of course, the defendant, Lawrence, to have waived the objection that the complainants in that case would not be entitled to any relief, the evidence failing to sustain their bill.

If the court, however, had entered such a decree, the *complainants*, at least, could have said not a word against it. So far as *they* are concerned, such a decree would have been, in every respect, equitable.

First, because in that bill they were seeking equity; and he who seeks equity must do equity.

Second, because it would have been, as we have just seen, in exact accordance with their offer.

And, third, because of the fraud which they sought to perpetrate upon the court, to say nothing of the defendant, by utterly misrepresenting, in their sworn bill, the true character of the transaction.

To say, then, that Lawrence was the complainant, that the decree was obtained solely at his instance, that they were only defendants, and that a court of equity, in the exercise of its ordinary powers, and independently of any statute, could not impose any terms upon complainants, or require them to pay what was no more than legal interest, and what they had in fact offered to pay, is a proposition that, we believe, neither this court, nor any other court of equity, will entertain.

It may well be that no such precise case can be found in the books, and that there is no precedent exactly in print; but this is a court to which we have a right to look for precedents, and which, in a proper case, will not hesitate to make them.

We believe, therefore, that, for one or both of the reasons assigned above, this court will decline jurisdiction. If it should be thought proper, however, to look farther into the case, then we say,

II.

THAT THE STATUTE IN QUESTION DOES NOT IMPAIR THE OBLIGATION OF ANY CONTRACT.

First. The reason last assigned why the court has no jurisdiction, applies with equal force to this part of the case.

If the court below could have rendered precisely the same decree, without reference to the statute in question, then, of course, the plaintiff's rights were not affected by the passage of said act, nor was the obligation of this particular contract in any way impaired.

The effect of the statute on *other* contracts we have now nothing to do with. Unless the *plaintiffs* were injured, they cannot raise the question.

This point seems to us conclusive.

But, second. The plaintiffs' contract was to pay twelve per cent., of which ten was secured by the mortgage, But the law, they say, entered into the contract, and became a part of it, so that it is to be construed as if the parties had agreed upon six per cent.

Admitting this to be so, how is the obligation of this contract *impaired* by a law that simply enables the lender to recover the ten per cent., according to the intention of the agreement?

To *impair* is to weaken or diminish. But this statute, so far from weakening or diminishing the obligation of the contract, rather added to and increased it. The most that can be said, is, that it "created a contract where none previously existed, by rendering "that a binding contract, which the law of the land had declared "to be invalid; and that it operated to divest and destroy the vest-"ed rights of the plaintiffs," as insisted by the parties in *Satterlee v. Mathewson*, 2 *Peters*, 380, 411.

But none of these objections in that case were sustained by this court. The court says: "Now, this law may be censured, as "it has been, as an unwise and unjust exercise of legislative power; "as retrospective in its operation; as the exercise, by the legisla-"ture, of a judicial function, and as creating a contract between "parties, where none previously existed. All this may be admit-"ted; but the question now is, does it impair the obligation of the "contract between the State and Wharton?"

After showing that it did not, the court then goes on to inquire whether the obligation of the contract *between the parties* was impaired by the statute.

"The objections urged at the bar, and the arguments in support "of them, apply to that contract, if to either. It is that contract "which the act declared to be valid, in opposition to the decision "of the Supreme Court; and, admitting the correctness of that de- "cision, it is not easy to perceive how a law, which gives validity "to a void contract, can be said to impair the obligation of that "contract. Should a statute declare, contrary to the general prin- "ciples of law, that contracts founded on an illegal or immoral "consideration, whether in existence at the time of passing the "statute, or which might hereafter be entered into, should never- "theless be valid and binding upon the parties, all would admit the "retrospective character of such an enactment, and that the effect "of it was to create a contract between parties where none pre- "viously existed. But it surely cannot be contended that, to cre- "ate a contract, and to destroy or impair one, mean the same thing."

To same effect is *Wood v. Kennedy*, 19 *Ind.*, 68.

"The objection, however, which was most pressed upon the "court, was that the effect of this act was to divest rights that were "vested by law in Satterlee. There is certainly no part of the "Constitution of the United States which applies to a State the "this description; nor are we aware of any decision of this, ame "Circuit Court, which has condemned such a law, on this gr "provided its effect be not to impair the obligation of a co im- "and it has been shown that the act in question has no such "upon either of the contracts before mentioned."

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The reasoning and conclusions of this court in the above case seem equally applicable to the case at bar; on the assumption, that is, that the statute in question had any effect upon the contract at all.

This assumption, however, we most emphatically deny.

And this leads us to say,

Thirdly, *that the only effect of this statute was to repeal a penalty; and the repeal of a penalty has uniformly been held not to impair the obligation of contracts.*

The only statutes in force when this contract was made, were the statutes of 1845 and 1849. By the statute of 1845, the lender, who should reserve more than six per cent., forfeited threefold the whole interest. Of this forfeited interest, only one-third went to the defendant, while *the other two-thirds were to be paid into the county treasury.*

A clearer case could hardly be imagined. It is not only a penalty, but a fine.

And the law of 1849 made no difference in this respect, so far as this case and others like it are concerned. It did away with this threefold forfeiture as to money *not* loaned; but as to "money loaned," left it in full force.

This has been expressly decided by the Supreme Court of Illinois, in *Smith v. Whittaker*, 23 *Ill.*, 367; and *Kinsey v. Nisley*, 23 *Ill.*, 505.

In this latter case, the court say that the acts of 1845 and 1849 are to be construed together. The act of 1849 did not repeal or design to repeal the 4th section of the act of 1845. The penalty there provided still operates in all cases where more than 10 per cent. is reserved for *money loaned.*

The next question, then, is, did the repeal of these penalties divest any vested rights of the plaintiffs, or impair the obligation of their contract?

Nothing, it would seem, can be better settled than this question. There has been some difficulty attending the question, how far the *remedy* as to some other points, may be modified; but as to *penalties*, so far as we know, there never has been but one opinion.

In *Welch v. Wadsworth*, 30 *Conn.*, 149, we have a case remarkably like the present.

The defendant was there sued upon a usurious note, and a default entered against him. By the law then existing, plaintiff could recover only the principal sum, deducting all payments of interest that had been made. After the default, and before the assessment of damages, an act was passed making valid this particular class of contracts. Held that the plaintiff could, under this act, recover the principal and eight per cent. interest, and that the act did not impair the obligation of contracts, within the meaning of the Constitution of the United States.

This case is even stronger than our own; inasmuch as the usurious lender was there the plaintiff at law, while here he is, as we maintain, defendant in equity. There he recovered all the principal and interest, without any deduction for past payments, while here that deduction has been enforced. To same effect as to another statute on interest, *Savings Bank v. Allen*, 28 *Conn.*, 97.

So in *Wood v. Kennedy*, 19 *Ind.*, 68, it was held that a law repealing penalties, or consequences in the nature of penalties, attached to usurious contracts, under a former law, did not impair the obligation of contracts, but rather enforced or validated them. Same point, *Andrews v. Russell*, 7 *Blackford*, 474.

A right cannot be said to be impaired by a statute which imposes an additional duty in order to preserve it.

Tarpley v. Hamer, 9 *S. & M.*, 310.

All which is respectfully submitted.

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